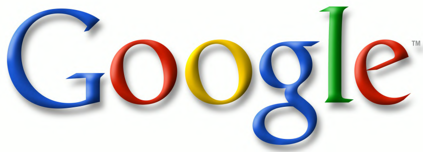

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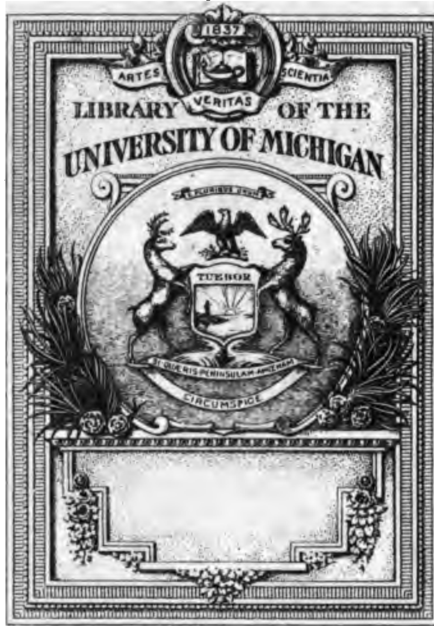

THE GIFT OF
Herbert A. Jump

Story of the Session

of the

California Legislature

of

1911

By

Franklin Hichborn

"California is a State worth fighting for"

HIRAM W. JOHNSON

San Francisco
Press of The James H. Barry Company
1911

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PREFACE.

The Story of the California Legislature of 1909 dealt with the blocking of progressive measures by the firmly-entrenched political organization known in California, for the want of a better name, as the "machine."

The Story of the California Legislature of 1911 deals with the passage of the progressive measures, the defeat of which had been accomplished two years before.

The purpose of preparing the review of the 1911 session for the press is to give the California public the knowledge of how these progressive measures were passed, who were instrumental in their passage, and who opposed their enactment into law. The same general plan of treatment is followed in the 1911 review as in that of the 1909 session.

The political revolution through which California has passed, the development of the State during the last decade, and the accompanying increase of population, together with the gaining power of Labor in industry and politics, present new issues which The People of California are called upon to meet. Measures involving these new issues are considered at length.

Thus the tenderloin interests, cut off from the legislative support of their political allies, the public service corporations, were not only unable to prevent the passage of an Anti-Racetrack Gambling law and a Local Option law at the 1911 session, but failed in their efforts to prevent measures for effective treatment of the social evil becoming a recognized State issue, to be considered, not from the standpoint of financial backers and ex-

ploiters of prostitution, but on the basis of practical solution. For this reason, several chapters are devoted to moral issues, issues which bid fair henceforth to be considered on their merits.

In the same way, scientific treatment of the problems that have arisen because of changed conditions of industry can no longer be sneered down or laughed down. Several chapters are accordingly devoted to the so-called Labor measures with which the 1911 session was called upon to deal.

Another important question, due to the shifting of population to certain confined areas, is that of reapportionment of the State into legislative districts. Three counties, with an area of 4882 square miles, are shown by the 1910 census to have a population of 1,167,170, an increase of 523,897 in ten years. The remaining fifty-five counties of the State, with 153,415 square miles, have, according to the 1910 census, a population of 1,210,350. Thus fifty-five counties, with an area of 153,415 square miles, have a population of only 43,180 more than three counties with an area of only 4882 square miles.

Because of this, conditions have arisen which were not thought of when the State Constitution of 1879 was adopted. But reapportionment must be made under the provisions of the 1879 Constitution. The 1911 Legislature was frankly unable to deal with the new problems presented, and adjourned without a reapportionment bill having been passed. The subject of reapportionment is treated in detail.

The so-called Tide Lands bills, the passage of which marks the entering upon a new policy in the manage-

ment of water front properties, are considered at length, because their passage indicates how the large centers of population may, through the Legislature, dominate the State, and for the further reason that the future industrial well-being of California depends largely upon correct solution of the water front problem.

No attempt has been made to deal with all the important measures considered at the 1911 session of the Legislature. But those which give a wide view of the session's work have been treated, as well as those in the defeat or passage of which large groups were interested, or important policies involved.

FRANKLIN HICHBORN.

Santa Clara, Cal., Sept. 21, 1911.

CHAPTER I.

THE NEW ORDER.

At the Primary and Final Elections of 1910, Those Candidates for the Legislature Who, as Members of Senate and Assembly of 1909, Had Opposed Progressive Policies Were Defeated, While Those Who Had Supported Such Policies Were Re-elected—But the Progressives of Both Houses, While Presumably in Strong Majority, Previous to the Meeting of the 1911 Legislature, Were Without Definite Plan of Action, or Even Fixed Policies.

The election of Hiram W. Johnson, Governor of California, carried with it the defeat of the "machine" members of Senate and Assembly who had for years dominated the Legislature.[1] On the other hand, those members of Senate and Assembly who, during the session of 1909 had opposed machine measures and policies,

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1 The following statement issued immediately after the November elections (1910), by Meyer Lissner, Chairman of the Republican State Central Committee, indicates how complete was the anti-machine victory:

"Four years ago the first serious organized effort to take the control of the government of California from the political bureau of the Southern Pacific Railroad was begun. Those loyal, real Republicans, who initiated that movement, were scoffed at for their pains. The railroad had so long been in control, its tentacles were so firmly fastened in every governmental department, State, county and municipal, that it was generally considered invincible. It was a big job to attempt to smash the machine of the interests, but it has been accomplished. Like all great undertakings that are right in principle, this movement in California needed a man to lead it to victory, and that great leader was found in Hiram W. Johnson. Without a man of his calibre, ability and unselfish devotion to the cause, we could not have won; but we have suc-

were, in the majority of cases, re-elected to serve in the Legislature of 1911. This is particularly true of the Senate.

At the session of 1909, the Senate had divided, for example, on the question of a State-wide practical vote for nomination of United States Senator.[2] The anti-machine members had advocated the State-wide vote. The so-called organization or "machine" Senators had advanced, with eventual success, the "district, advisory-vote" plan.

Of the twenty Senators whose terms expired at the close of 1910, eleven had supported the "district, advisory-vote" plan. One only of the eleven, Senator Leroy A. Wright of San Diego, was re-elected. The ten[3] re-

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ceeded, and it is a great day for California. It is not altogether a victory for the Republican party; it is equally the victory of Progressive Americanism; it transcends all party lines because the issue that was made was not a party issue at all. It was the allied special interests on one side against the people on the other, and the people won.

"The next Legislature will be the best Legislature ever assembled in the State of California; and with Governor Johnson in the State Capitol and Lieutenant-Governor Wallace presiding over the State Senate and appointing the Senate Committees, unquestionably the pledges of the party platform will be redeemed and more progressive, constructive legislation enacted than California has been given for a generation.

"Our campaign was conducted on principle and on absolutely clean lines. We did not barter, or pledge, or compromise in any manner. No candidate elected on the Republican ticket is in any way obligated except to the people themselves.

"To the thousands of loyal citizens throughout the State who gave so generously of their time and money in this campaign, we extend our sincere thanks and appreciation, and to the loyal Republican and Independent press of the State, without whose aid the victory could not have been won, we feel under still greater obligations."

2 See Chapters VIII, IX, X, XI, "Story of the California Legislature of 1909."

3 Of the ten, four, Hartman, Leavitt, McCartney and Savage, were defeated at the primaries; two, Kennedy and Price, were defeated at the final election; four, Willis, Bates, Reily and Weed, were not candidates for re-election.

maining, although the majority were candidates for re-election, were not returned to the Senate.

The nine retiring Senators, who had opposed the machine on this issue, were Anthony, Bell, Black, Boynton, Caminetti, Cartwright, Curtin, Miller and Sanford.

Of the nine, Miller declined to be a candidate for re-election. Anthony was a candidate for nomination for re-election in a district [4] which probably contains a greater percentage of disreputable characters than any other Senatorial district of the State. Anthony was defeated. The remaining seven Senators of the nine who had voted for the practical State-wide plan for nominating United States Senators were re-elected.

Another issue which divided the Senate of 1909 sharply was that of Railroad regulation. The two measures over which the division came were the Wright Railroad Regulation bill, and the Stetson Railroad Regulation bill.

The Stetson bill was regarded as practical and effective, and was, indeed, made the basis of the Eshleman Railroad Regulation measure which became a law at the 1911 session. The Wright bill was not—to put it very mildly—regarded as so effective as the Stetson bill. The Stetson bill was defeated at the session of 1909,[5] however, the Wright bill becoming a law.[6]

Of the twenty Senators whose terms expired at the

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4 The Twenty-fourth Senatorial District (1901 apportionment), which includes the San Francisco Chinatown and tenderloin. Anthony made the best record of the San Francisco delegation in the 1909 Senate. Nevertheless, he opposed several important Progressive measures, notably the Stetson Railroad Regulation bill.

5 See "Story of the California Legislature of 1909," Chapters XII and XIII.

6 About the first thing the Legislature of 1911 did was to repeal the Wright law. See Chapter XI.

close of 1910, twelve at the test supported the Wright bill, and eight the Stetson bill.

Of the twelve who supported the Wright bill, only one was re-elected, Wright of San Diego. The remaining eleven[7] did not sit in the Senate of 1911.

On the other hand, of the eight who supported the Stetson bill, one, Miller, was not a candidate for re-election, while the remaining seven[8] were re-elected.

Such examples could be multiplied. With but one or two exceptions, those retiring Senators, who, at the session of 1909 had supported progressive policies, were re-elected, while those who had opposed such policies were not returned to the Senate.

The same was largely true of the Assembly.

On the eleven votes[9] which were generally accepted as the test votes of the Assembly of 1909, forty of the eighty Assemblymen voted only five times each, or less than five times each, for the so-called progressive policies. Of these forty Assemblymen, only two[10] were re-elected to the Assembly, although two[11] were elevated to the Senate.

On the other hand, of the forty Assemblymen who, at the session of 1909 were recorded as voting for progressive policies six times or more on the eleven test

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7 Anthony, Bates, Hartman, Kennedy, Leavitt, McCartney, Price, Reily, Savage, Weed, Willis.

8 Black, Bell, Boynton, Caminetti, Cartwright, Curtin and Sanford.

9 See Tables B and C, "Story of the California Legislature of 1909."

10 Assemblymen Schmitt and Coghlan, both of San Francisco.

11 Beban of San Francisco, and Hans of Alameda.

votes, no less than twenty-one [12] were re-elected to the Assembly, while one [13] was elected to the Senate.

Although the election returns which showed the defeat of the old machine guard of Senate and Assembly were most gratifying to the Progressives of both parties, nevertheless there was nothing to show conclusively that the Progressives would be in control of either House. Indeed, there was good reason to believe that the contrary would develop. The San Francisco delegation-elect to both Senate and Assembly [14] was known to be something less desirable, if such could be possible, than the San Francisco delegation that had sat in the Legislature of 1909. The only thing of which the Progressives could be certain was that twenty-one Assemblymen had been re-elected, whose records at the session of 1909 would indicate that they could be counted upon to support Progressive measures. In the new Senate were eighteen [15] members who had made good records at the

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12 The 1909 records on the eleven test votes of the twenty-one members of the Assembly of 1909, who were returned to the Assembly of 1911, were as follows: For Progress and Reform eleven times: Bohnett, Cattell, Hewitt, Mendenhall, Polsley, Telfer, Wilson, Young; for Progress and Reform ten times and once absent, Cogswell, Kehoe, Maher and Wyllie; for Progress and Reform ten times and once against, Flint, Hinkle and Stuckenbruck. The six remaining Assemblymen, Gerdes, Rutherford, Griffiths, Hayes, Beatty and Cronin, on the eleven tests, voted six times or more with the Progressives.

13 Juilliard of Sonoma. At the session of 1909, on the eleven test Assembly votes, Mr. Juilliard is recorded as voting ten times for Progress and Reform, and once absent.

14 Mr. Frederick O'Brien, of the United Press, in his "Call of the Roll," of the 1911 Legislature, names four San Francisco members outright as saloonkeepers or bartenders. The claim has been made that no less than twelve of the twenty-seven members of the San Francisco legislative delegation of 1911 were barkeepers or otherwise connected with the saloon business.

15 At the meeting of Senators at Santa Barbara following the November elections, some went so far as to claim that in the Senate but seventeen members could be counted upon on every occasion to support progressive policies. This was four members less than the majority of twenty-one necessary for the control of the Senate.

session of 1909 and who were generally relied upon, three who were doubtful, ten whose legislative records were not on the side of progressive policies, while the remaining nine members were untried men, with records yet to be established.

On the other hand, every member of both Houses, Democrat as well as Republican, had been pledged by his party platform to support the progressive policies which the machine element had, at the session of 1909, succeeded in defeating. Thus, by their party platforms, the Republican and Democratic members were obligated to restore the Australian ballot to its original simplicity and effectiveness, to make provision for a State-wide, practical vote for the nomination of United States Senators, to take the judiciary out of politics, to simplify the methods of criminal procedure, to submit a constitutional amendment to the people providing for the Initiative, to pass an effective Railroad Regulation law.

All these reforms had been defeated at the legislative session of 1909.

In addition to the above-named reforms, both parties were, by their platforms, pledged to the adoption of a Constitutional Amendment providing for the Referendum and Recall, to correction of the Direct Primary law of 1909, and to the passage of effective conservation laws.[15a]

The Republican party, which dominated both Houses of the Legislature, had in its State platform gone even further. The Republican majority in both Houses—if party majority counts for anything—were, by their plat-

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15a See the Republican and Democratic platforms printed in the appendix.

form, pledged to the legislation necessary to provide "for a short ballot," reducing to a minimum the number of elective officers, and thereby relieving the confusion caused by a multitude of candidates for minor offices; to a county Government act to provide "home rule for counties," similar to that enjoyed by municipalities; to the enactment of laws for the establishment in California of a modern reformatory for first offenders; to systematic examination of the business accounts of State and County offices; an Employers' Liability Act to put on the industry the charges of its risks to human life and limb, along the lines recommended by Theodore Roosevelt.

Another provision contained in the Republican platform that is not found in the Democratic, is a pledge to submit "to the judgment of the voters of California a constitutional amendment providing for woman suffrage."[16]

But the experience of the past in California had been that party platforms impose no obligation that holds beyond the day of election. Because the party platforms declared for effective railroad regulation, a practical Direct Primary law, and the restoration of the Australian ballot, it was by no means certain that those gentlemen, who as candidates prate loudest of party obligation, would be held bound by party declarations as set forth in the several platforms.[17]

It was generally recognized that the fulfillment of

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16 See Republican platform printed in the appendix.

17 Senator Wolfe, for many years Republican leader in the Senate, in his argument against the Woman Suffrage Amendment, in the Senate January 26, 1911, insisted that in spite of platform declaration, the Republican party was not bound by any party pledge for woman suffrage. The test in determining the will of

these party pledges had little or nothing to do with which party was successful at the polls, but whether the majority in the Legislature, regardless of party affiliations, was independent of the political machine which had long dominated the State. And that was a question to be given conclusive answer only after the Legislature had convened.

Soon after the November elections, a meeting of Senators,[18] recognized as being independent of the Southern Pacific political machine, met at Santa Barbara for the purpose of ascertaining, so far as possible, the exact working force of the anti-machine element. Governor-elect Johnson and Lieutenant-Governor-elect Wallace attended the meeting.

If the meeting developed anything, it was that the Progressive Republicans could not count upon control of the Senate. Certain Senators, usually classed as "Progressives," were not classified as dependable on all issues. What should be done was clear enough, what could be done was by no means so clear to the Senators in attendance.

But far more important than the Santa Barbara gathering, was the final meeting of the Republican State Central Committee held in San Francisco on November 15. The attendance was not limited to members of the

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the people, Wolfe contended, is found in the vote given the standard bearer of the party. He denied that Governor Johnson had received a majority vote. Therefore, Wolfe held, the principles set forth in the Republican State platform are not necessarily the principles sanctioned by a majority of the Republican party, or by a majority of the people of the State.

18 The Senators who attended the Santa Barbara meeting were Cutten, Birdsall, Boynton, Stetson, Strobridge, Tyrrell, Rush, Larkins, Gates, Hewitt, Thompson, Bell, Estudillo and Roseberry. Several other Senators had been invited but were unable to attend.

committee alone. State Senators, Assemblymen, editors of not only progressive but reactionary newspapers, county chairmen and citizens who had contended long for the Progressive policies set forth in the Republican and Democratic State platforms, were present and took part in the discussions.

Those in attendance assumed as a matter of course that the Republican majority in the Legislature would carry out the platform pledges. The Chairman of the State Central Committee was instructed to appoint committees for the purpose of preparing tentative suggestions or measures in conformity with the platform pledges of the Republican party, for submission to the Legislature.[19] Acting under these instructions, Chairman Meyer Lissner appointed the several committees[20] authorized.

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19 There was some criticism at the time that the State Central Committee should offer suggestions to the Legislature. Curiously enough, the Republican State Central Committee—or the forces theretofore behind the State Central Committee—had always offered such suggestions. At the session of 1899, the year of the Burns Senatorial deadlock, the State Central Committee even went so far as to open headquarters at Sacramento, and remained at the capital during the entire session, chairman, secretary and all, in the interest of the machine candidate for the Federal Senate. The only difference in 1910 was that the suggestions were made in the interest of the whole people and in the furtherance of pledges under which the progressive wing of the Republican party had been intrusted with the government of the State, while at previous sessions the suggestions have not always, to put it mildly, been for the best interest of the whole people. Then, too, the proceedings at the 1911 session were open and above board; at previous sessions the proceedings have not always been open and above board.

20 The following committees were appointed:

Conservation, Including Water Power, Irrigation and Reclamation Districts, Mineral Lands—George C. Pardee, Chairman; Francis J. Heney, Wm. Kent, Chester H. Rowell, S. C. Graham, Senator Marshall Black, Assemblyman-elect W. C. Clark, L. L. Dennett, Harold T. Power, Ralph Bull, Francis Cutler and Milton T. U'Ren.

Railroad Commission, Including, besides Platform Pledges, Legislation Prohibiting Free Passes—Senator John W. Stetson, Chairman; John M. Eshleman, Harvey D. Loveland, Alex. Gordon, Wm. R. Wheeler, F. P. Gregson, Assemblyman P. F. Cogswell.

Reapportionment, Including Senate, Assembly, Railroad Com-

These committees were instructed to report at a general meeting of members of the Legislature to be held in San Francisco during the last week preceding the opening of the session.

The reactionary press was quick to belittle this open meeting of members of the Legislature and citizens to discuss subjects of legislation. "There is some specula-

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mission, Board of Equalization—Senator N. W. Thompson, Chairman; Senator John W. Stetson, Senator A. E. Boynton, Assemblyman E. C. Hinkle, E. A. Dickson, Assemblyman W. F. Chandler, Assemblyman W. R. Flint, J. O. Hayes, Ralph Hathorn.

Election Laws, Including Restoration of Australian Ballot, Non-Partisan Judiciary, Short Ballot, Simplification of Direct Primary Law Generally, and Providing for State-wide Advisory Vote on United States Senators, Publicity of Campaign Expenses, Regulation of Lobbyists—Senator A. E. Boynton, Senator Miguel Estudillo, Senator Geo. S. Walker, Clinton White, Thos. E. Haven, Prof. Wm. Carey Jones, Judge N. P. Conrey, Assemblyman C. C. Young, Marshall Stimson, Paul Bancroft.

City and County Government, Including "Constitutional Amendment No. 1," General Act for Commission Plan of Government for Cities, the Fee System, County Home-rule, Uniform Accounting and Improved Business Methods—State Controller A. B. Nye, Chairman; Attorney-General U. S. Webb, Senator-elect Leslie R. Hewitt, Guy C. Earl, Assemblyman L. D. Bohnett, Frank Devlin, Prof. R. L. Green.

Civil Service and Merit System—Senator L. H. Roseberry, Chairman; Assemblyman-elect H. S. Benedict, Dr. F. B. Kellogg, E. F. Adams, Wm. A. Spalding.

Revision Criminal Procedure—W. J. Hunsaker, Chairman; Curtis H. Lindley, Senator Chas. P. Cutten, Attorney-General U. S. Webb, Assemblyman Wm. Kehoe, District Attorney W. H. Donohue, Justice M. C. Sloss, Wm. Denman, J. W. Wiley.

Reformatory for First Offenders—Justice Curtis D. Wilbur, Chairman; Chas. M. Belshaw, Assemblyman-elect H. W. Brown, Assemblyman W. F. Chandler, E. A. Walcott, Albert Bonnheim, Judge Everett Brown, James M. Oliver, A. J. Pillsbury.

Suffrage—Senator Chas. W. Bell, Chairman; Senator E. A. Birdsall, Senator-elect Lee C. Gates, J. H. Braly, Assemblyman H. G. Cattell, Assemblyman-elect W. A. Lamb, A. S. Ormsby.

Direct Legislation—Senator-elect Lee C. Gates, Chairman; Dr. John R. Haynes, Judge John D. Works, Assemblyman-elect W. C. Clark, Assemblyman-elect C. H. Randall, Milton T. U'Ren, A. H. Elliott.

Public Service Commission—Percy V. Long, Chairman; Senator-elect Leslie R. Hewitt, W. R. Davis, Chas. S. Wheeler, Assemblyman C. C. Young.

Employers' Liability Act; Injunctions in Labor Disputes—H. Weinstock, Chairman; Senator E. K. Strobridge, Assemblyman A. H. Hewitt, Frank R. Devlin, A. A. DeLigne, J. W. Wiley, Will J. French.

Before the work of these committees was concluded other citizens were invited to become members, many of whom did so.

tion," languidly observed the San Francisco Call, "as to the probable attendance at Lissner's meeting of committees." [21]

But from the moment the meeting was called to order, there was no "speculation"; its more-than-looked-for success from the standpoint of attendance, was one of the many political surprises of the year. Of the eighty members who were to sit in the Assembly of 1911, sixty-two were in attendance. The Senate was proportionately as well represented.

The laymen in attendance had come from every part of the State, zealous in the cause which Governor-elect Johnson was advocating so admirably, to take the government of the State of California out of the hands of the Southern Pacific Railroad Company.[22]

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21 The Call went to considerable pains to make it appear that the meeting was strictly partisan Republican. In speaking of the meeting The Call said: "Senator J. B. Sanford of Ukiah, **although not wanted because he is a Democrat,** is already in this city, and will be an **interested spectator** when the Legislative Committees get busy."

The black type is mine. On the evening of the day that the article appeared, Senator Sanford stated to the writer that he had received two invitations to be present at the meeting and participate in its deliberations. As a matter of fact, Democratic members took as active a part in the meeting as Republican members.

22 Politicians who had been powers under the old machine regime of the Republican party, were seen about the hotel but not heard.

Eddie Wolfe, former Senate leader, strayed into the meeting not unlike a lost sheep that gets into the wrong fold. There were none to greet him; none to "glad-hand" him. He stood irresolutely in the rear of the room for a time.

"There are plenty of seats in front of those standing in the rear," announced Chairman Lissner graciously.

But Senator Wolfe did not avail himself of the invitation "to come forward."

He who had been a force in so many legislative gatherings took a back seat.

As the Progressives filed out of the hall at the close of one of the early sessions, a lonely figure was pointed out by a one-time machine follower, whose efforts to get aboard the "bandwagon" were pathetic.

"Not a man has spoken to him in two hours," announced the would-be bandwagoner feverishly.

The lonely figure in the lobby was Walter Parker, a maker of United States Senators and other things under the old-time regime.

But in spite of the excellent attendance and the high character of those present, it was apparent that, even then, five days before the Legislature was to convene, the Progressives were without definite plan of action or recognized leadership; that they were in doubt over some policies,[23] and in a temper to divide over others.[24]

The several committees read drafts of measures well calculated to bring about the reforms to which the Leg-

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23 The report of the committee appointed to draft an effective Direct Primary measure furnishes excellent example of this. One recommendation which was looked for, but did not come, was the elimination of the extreme partisan features of the 1909 Direct Primary law. Chester H. Rowell was quick to note the omission. He gave it as his opinion that a party should be permitted to nominate any one it chose. He showed that even under the cumbersome Direct Primary law of 1909, the Republican party could nominate a Democrat, and vice versa, by writing the candidate's name on the primary ballot. Rowell insisted that what was permitted by the back door should be permitted by the front.

The committee, instead of recommending the Oregon plan for the election of United States Senators, proposed a pledge for legislative candidates to abide, not by a vote of the whole people, but by a vote of "their party."

Assemblyman-elect Thomas F. Griffin of Modesto showed the weakness of the "within-the-party" vote plan as suggested in the committee's report.

"The people of California want," Griffin insisted, "what the people of Oregon already have, the machinery by which the Legislature can be morally committed to abide by the popular choice in electing United States Senators. If you cannot trust the people, who can you trust? Let us give The People of California what they are asking for, an honest provision to commit the Legislature to abide by their selection of United States Senator."

24 From the start, it became apparent that division was to come over the proposed conservation measures. Former Governor George C. Pardee, as Chairman of the Committee on Conservation, announced the several policies, which will be found outlined in the chapter on Conservation. Col. E. A. Forbes of Marysville, one of the leaders in the Progressive movement, and who has had much to do with water power development in Northern California, took the ground that radical legislation was undesirable because it would tend to discourage capital finding investment in California.

Governor Pardee in reply to the Colonel, pointed out that in our age, and in all ages, capital has shown itself amply able to take care of itself. He insisted that nothing in the proposed legislation discouraged legitimate enterprise. But the measures did safeguard the public against the grabbing of the State's undeveloped resources by speculators, to be put in "cold storage" and used as the basis of capitalization upon which we and our children and our children's children must pay tribute. The aim of the proposed conservation legislation was to prevent such grabbing;

islature stood pledged; nothing occurred that could be regarded as serious inharmony.

But the drafting of an admirable measure does not make it a law. There was at the meeting a noticeable lack of intelligent purpose and definite plan to which all stood committed. Left to drift, it was evident that even with a Progressive majority in each House, the remnants of the old machine in Senate and Assembly might, and probably would, be able to block reform legislation, precisely as had been done at the legislative session of 1909.

As one keen observer of that Palace Hotel meeting put it, "The Legislature needs a 'bracer.'"

The "bracer" was provided, quite unexpectedly to most, but from a source from which there was every reason to expect it. It came in Governor Johnson's inaugural address.[25]

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to hold the resources for the good of the whole people, thus making it impossible for a few to become very rich because of them, while the many were kept very poor because of the grabbing.

Entirely honestly and within the law, the ex-Governor said, the Colonel and his associates have grabbed large holdings. The aim of the proposed law, he insisted, was to prevent future Colonels, and the Colonel in the future, from being able to grab the State's resources.

"Under the proposed law," Pardee contended, "when military gentlemen reach out for undeveloped resources, they will find a limit placed upon their power to appropriate.

"We have nothing against you, Colonel Forbes," Pardee concluded pleasantly, "but against your wicked associates."

25 See Chapter III, "The Key to the 1911 Legislature." Governor Johnson's inaugural address will be found in full in the appendix.

CHAPTER II.

ORGANIZATION

In the Organization of the Legislature, Officers of Both Senate and Assembly, Who Had Served During Machine Domination of the Two Houses, Session After Session, Were Replaced by Men More in Sympathy With Progressive Policies—The Progressives Kept Control of the Committees.

Always attack your opponent at the weakest point, has long been a safe guiding motto closely followed by the machine.

Before the organization of the 1911 Legislature, the weakest point in the Progressive line was the Assembly Sergeant-at-Arms situation. So the activities of the old machine element were directed at that point.

At the opening of each session of the Legislature, six important offices must be filled immediately, that of Speaker of the Assembly, President pro tem. of the Senate, Secretary of the Senate, Clerk of the Assembly, and Sergeant-at-Arms of Senate and of Assembly.

Long before the 1911 Legislature convened, it was evident that the candidacy of Milton L. Schmitt of San Francisco[26] for Speaker of the Assembly was without effective support, and that A. H. Hewitt of Yuba City

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26 For Schmitt's record at the session of 1911, see Assembly table in the appendix. His record for the 1909 session will be found in the "Story of the California Legislature of 1909."

would be elected to that position practically without opposition. Quite as evident was it, that Eddie Wolfe of San Francisco, who had long served as President pro tem. of the Senate, had no chance for re-election, and that Senator Boynton of Oroville would be elected to succeed him. Lewis A. Hilborn of San Francisco and Clio Lloyd of Santa Barbara, who had, under the old order, served as Secretary of the Senate and Clerk of the Assembly respectively, did not even permit their names to be presented for consideration.

In the same way, J. Louis Martin of Oakland, who was all but regarded as a fixture as Sergeant-at-Arms of the Senate, did not make any open effort to hold his place. For these several positions, the Progressives not only had candidates, but had the votes to elect them.

The situation in the Assembly when it came to the election of Sergeant-at-Arms, was by no means so certain. John T. Stafford of Sacramento, who under the old order had long served as Sergeant-at-Arms of the Assembly, became a candidate for re-election.

During the years Stafford had served the Lower House, he had been an accommodating officer. In a thousand and one ways he had made the work of the members easy for them. Even some of the most extreme Progressives had a kindly feeling for Stafford. A number of these Progressives had been advanced to the Senate, where, by the new turn of the political wheel, they found themselves leaders. When they learned that Stafford sought re-election, several of them endorsed his candidacy.

Stafford, on his part, made an active campaign. At

the Palace Hotel meeting he was on hand soliciting support, and seemed to be making good progress. His election, it was recognized, however, would be taken as evidence of the inability of the Progressives to hold their forces together. On this basis, Stafford's candidacy assumed importance as the first display of strength of the opposing forces. At the Palace Hotel meeting, the general impression was that Stafford would be elected. His opponent was E. H. Whyte of Sacramento.

The test came in the Assembly Republican caucus. Stafford was defeated for caucus nomination by a vote of 39 to 30,[27] Whyte being nominated. L. B. Mallory of Los Gatos, a strong Progressive, was named for Chief Clerk. A. H. Hewitt got the caucus nomination for Speaker as a matter of course.[28] Schmitt did not even make a showing. The Progressive control of the Lower House was shown to be complete.

The success of the Progressives in organizing the Senate was no less pronounced than it had been in the Assembly. The Republican Senate caucus organized by

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27 The caucus was, of course, held behind closed doors, and report of the proceeding must be taken at second hand. But the following vote for Sergeant-at-Arms was given out at the time as the line-up of the caucus:

For Whyte—Beckett, Benedict, Bliss, Bohnett, Butler, Callaghan, Cattell, Chandler, Clark, Cogswell, Farwell, Fitzgerald, Flint, Gaylord, Hamilton, Harlan, Hewitt, Hinkle, Hinshaw, Jasper, Joel, Judson, Kehoe, Kennedy, Lamb, Lynch, March, McDonald, Mott, Preisker, Randall, Rogers of Alameda, Smith, Stevenot, Sutherland, Telfer, Tibbitts, Wyllie, Young—39.

For Stafford—Beatty, Bennink, Bishop, Brown, Coghlan, Cronin, Crosby, Cunningham, Denegri, Feeley, Freeman, Gerdes, Griffiths, Hayes, Held, Jones, Lyon of Los Angeles, Malone, McGowen, Mullally, Nolan, Rimlinger, Rodgers of San Francisco, Rosendale, Rutherford, Ryan, Sbragia, Schmitt, Walker, Williams—30.

28 On the floor of the Assembly, Hewitt's election was made unanimous, the Democratic caucus nominee, J. W. Stuckenbruck, withdrawing his candidacy in Hewitt's favor.

electing Charles W. Bell of Pasadena Chairman.[29] Senator Boynton was nominated for President pro tem.; Walter N. Parrish of Stockton, Secretary, and Joseph L. Coughlin of Oakland, Sergeant-at-Arms. There was nothing of the old regime left in the Senate organization, after the Republican caucus had completed its labors. The Lincoln-Roosevelt branch of the Republican party had demonstrated that it was in complete control of both Houses.[30] Not only this, but the anti-machine Democrats in the Senate stated openly that they were pre-

29 Under the old regime, Senator Bell was denied even a place in the 1907, and the 1909, Republican Senate caucus, although at the session of 1909 he lacked two votes only of being admitted. See "Story of the California Legislature of 1909."

Some of the explanations of those who in 1909 voted to deny Bell admittance to the caucus, are, in view of what has occurred since, very amusing. For example, Senator Leroy A. Wright, in the San Diego Union of August 14, 1910, said in explanation of his vote on this issue:

"I did vote to keep Bell out of the Republican caucus, because he was not elected as such and was not entitled to participate in those matters political which came before it."

With the Progressives in control, not only was Senator Bell admitted to the caucus, but he was elected chairman of the caucus, and leader of the Republican majority on the floor of the Senate.

30 The contempt with which the Lincoln-Roosevelt League or progressive branch of the Republican party was held by the "Regulars" is well illustrated by an incident in the Assembly of 1909.

Assemblyman McClellan was found to be absent on one occasion when his vote was needed. He was brought in under call of the House. As is customary in such cases, McClellan was taken before the bar for sentence, a sentence which is never imposed, the lenient Legislators invariably granting excuse. Speaker Stanton was in the chair, and apparently in a facetious mood.

Stanton announced that he would impose the heaviest penalty he could think of. He accordingly sentenced McClellan to join the Lincoln-Roosevelt League. (Cheers and laughter from the machine members.)

Assemblyman Transue thereupon took the floor, and with much display, insisted that the proposed punishment was "cruel and unusual," and would not stand the test of the courts. (More laughter and cheers.)

And yet, within two years the Lincoln-Roosevelt League, so despised by the old machine element, was to sweep the State, secure control of the machinery of the Republican party, elect a Governor, and name a Legislature in which the merry Stanton, the witty Transue and the delinquent McClellan, and very few of those who roared their laughing approval of the Stanton-Transue witticisms had membership or place.

pared to work, as they had worked two years before, side by side with the Progressive Republicans in support of those Progressive policies to which both parties stood pledged.[31]

The next step in both Houses was committee organization. The appointment of the Senate committees had been left to Lieutenant-Governor Wallace; the Assembly committees to Speaker Hewitt.

The lesson which the machine had forced upon the Progressives in 1909, namely, that control of the committees means control of the Legislature, was not forgotten. While those who had opposed Progressive policies in 1909 [32] were not treated with the intolerance which governed the machine when in power in that organization's treatment of the Progressives, nevertheless, the stalwarts of the old machine found themselves in the minority on every committee.

Senator Bell was made chairman of the Senate Committee on Public Morals. This was an instance of retributory justice, equaled only by the election of Bell to the chairmanship of the Senate Republican caucus.

For years, the principal office of the Senate Committee on Public Morals had been to block such legislation as might affect adversely the race track gambling inter-

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31 The attitude of the anti-machine Democratic Senators was well stated by Senator A. E. Campbell of San Luis Obispo: "The Republicans," said Campbell, "have stolen our Democratic thunder. But I don't care who gets the credit for the reforms, so long as the people get the reforms."

32 Senator Wolfe was given the chairmanship of the Committee on Public Buildings and Grounds; Senator Wright was made chairman of the Committee on Federal Relations. Wolfe was even given a place on the important Committee on Rules. Contrast this treatment with that accorded Senator Bell, the Progressive Republican, who, with the machine in control at the sessions of 1907 and 1909, was given no chairmanship, and was even denied admittance to the Republican caucus.

ests. In 1907, an anti-Race Track Gambling bill passed the Assembly but was "held-up" in the Senate Public Morals committee. Senator Bell had asked that the bill be returned to the Senate for action. The organization leaders, that year in complete control of the Senate, contemptuously denied Bell's petition. These leaders, two years later, in 1909, sneered at Bell's efforts on behalf of the passage of a Local Option bill. In 1911, Bell was made chairman of the Public Morals Committee. It was then amusing to observe the gamblers, their agents in and out of the Legislature, associates and friends, who had ridiculed "Reformer Bell" in 1907-9, as they courted Senator Bell, chairman of the important Senate Committee on Public Morals.

Associated with Bell on the Public Morals Committee were Senators Thompson, Black and Cartwright, who had at previous sessions opposed the machine's stand on moral issues, and Senator Avey, who was serving his first term. Senator Avey had been elected as a Progressive.

In the regular course of legislative business the question of repealing the Wright Railroad Regulation law which was passed in 1909, would be referred to the Senate Committee on Corporations. The practical substitute for the Wright law would also go to the Corporations Committee. The importance of the Corporations Committee, therefore, can scarcely be over-estimated.[33]

Lieutenant-Governor Wallace selected as chairman of

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33 See "Story of the California Legislature of 1909," Chapter XIII, for the treatment accorded the Stetson Railroad Regulation bill by the Senate Corporations Committee of that session.

the Committee Senator Roseberry, who had been one of the most active Progressives who opposed the machine members at the session of 1909. Senator Stetson, author of the Stetson bill of 1909, was made ranking member of the committee. The other members of the committee were Larkins, Welch, Burnett, Gates, Hans, Beban, Caminetti, Holohan and Juilliard.

Gates and Larkins were new men but had been elected as Progressives. Caminetti, Holohan and Juilliard had been identified with the Progressive element in 1909. Beban and Hans, in the Assembly of that year, had sided with the "organization" in practically every contest. As to Welch and Burnett, while both sided against the effective Stetson bill at the session of 1909, Burnett stated on the floor of the Senate before the 1909 session closed that his support of the Wright bill as against the Stetson bill was due to misunderstanding.

While the Senate Corporations Committee was clearly dominated by the good-government element, the old "organization" could not reasonably claim that the "regulars" had not been given representation.

The selection of the Senate Committee on Election Laws was quite as important as that on Corporations. In this committee was to be fought the battle for necessary amendment of the Direct Primary law, for practical plan for popular nomination of United States Senators by State-wide vote, restoration of the Australian ballot, and other election reforms.

The committee appointed by the Lieutenant-Governor consisted of Senators Estudillo, chairman; Boynton,

Walker, Wright, Hare and Thompson, old members, and Larkins, Tyrrell, Hewitt, Gates and Juilliard, new members.

Of the new members, Juilliard had a record as an Assemblyman. At the session of 1909, he had voted for the practical, State-wide plan for the selection of United States Senators, for the Denman bill to take the judiciary out of politics, and for the Holohan bill that struck the party circle from the election ballot.

The remaining four of the five new members, Larkins, Tyrrell, Hewitt and Gates, had been elected as Progressives, and were counted safe for general reform of the election laws.

Of the six members of the Committee who served in the Senate of 1909, Estudillo, Boynton, Walker and Thompson voted for the practical, State-wide plan for naming the Federal Senator. Wright and Hare voted against the State-wide plan, and for the district advisory substitute, the "machine substitute," as it was called. Senator Wright, as has been seen, had the distinction of being the only Senator whose term expired in 1910, who had, at the session of 1909, voted for the district advisory substitute, to be re-elected. All of the six hold-over Senators had voted in 1909 to remove the party circle from the election ballot.

The important Finance Committee, to which every member who has an appropriation bill to put through must appeal, was headed by Senator Cutten, an active Progressive. On this committee was one new member only, Senator Hewitt, a Progressive from Los Angeles.

Of the twenty members other than Hewitt, fifteen[34] at the 1909 session had voted almost as a unit for Progressive policies. The other five[35] were usually found in opposition to the first-named group.

Following time-honored custom, every attorney in the Senate was made a member of the Judiciary Committee. There were twenty attorneys, just half the Senate, so the committee consisted of twenty members.[36]

But at the 1911 session, the ranking members of the Senate Judiciary Committee were Progressives. The reverse had been the case at the session of 1909.[37]

The Judiciary Committee is always important, for to it is referred every measure in which a legal point is involved. But in 1911 it became of more than ordinary importance for to the Judiciary Committee was to be referred the proposed Initiative and Referendum, and Recall amendments to the State Constitution.

Generally speaking, the entire Senate committee[38] organization was on the same basis as that of the five com-

34 Cutten, Black, Thompson, Boynton, Bell, Walker, Strobridge, Birdsall, Rush, Roseberry, Curtin, Caminetti, Cartwright, Sanford and Holohan—15.

35 Burnett, Hurd, Welch, Bills and Wolfe.

36 The Handbook of the California Legislature, 1911, gives twenty-one members on the committee, including Senator Birdsall. But Birdsall is not an attorney and was not a member of the committee.

37 Wolfe and Wright were the ranking members after the chairman, on the 1909 Senate Judiciary Committee. In 1911, these two gentlemen numbered fourteenth and fifteenth on the list.

38 The lobby representatives of Organized Labor expressed dissatisfaction with the personnel of the Committee on Labor, Capital and Immigration. Nevertheless, this committee made favorable report on the Eight Hour bill for women. The committee, as originally appointed, consisted of Larkins, chairman; Cutten, Martinelli, Boynton, Hurd, Wright and Juilliard. Later in the session Boynton gave way on the committee for Senator Bryant of San Francisco.

mittees considered, which, by the way, are the most important Senate committees. The Progressives were thus in complete control of the entire Senate organization.

In naming dependable committees in the Lower House, the Progressives were confronted with greater difficulties than in the Senate. Speaker Hewitt had comparatively little to guide him. The Assembly at the opening of a legislative session is an unknown quantity. The 1911 Assembly was no exception to the rule. To be sure, twenty-three of the eighty members had served in the Legislature of 1909, and several others had served at previous sessions. But more than two-thirds of the members were without records by which they could be judged.

Out of this untried material, with its leaven of old members, the majority of whom had good legislative records, Speaker Hewitt was called upon to form his committees.[39]

At the opening of the session much interest centered on the Assembly Committee on Common Carriers, for to this committee was to be referred the proposed Railroad Regulation measure.[40]

Eleven members made up the committee. Of the eleven, four had served in the session of 1909. Flint, Telfer, Gerdes and Mendenhall.

These four men were all identified with the Progressives during the 1909 session. On railroad measures

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39 Speaker Hewitt did not have the advantage of the careful canvass of the Assembly which the old machine element used to make even before the November elections. The machine formerly had men travel up and down the State "sizing up" prospective Assemblymen as committee timber.

40 The members of the 1911 Assembly Common Carriers Committee were: Preisker, chairman; Bliss, Crosby, Denegri, Flint, Gerdes, Hinshaw, Joel, Mendenhall, Smith, Telfer.

they voted, when there was division, with the anti-machine element on every issue.

The seven remaining members of the committee were new men with records yet to be made. But the majority of them had been elected as Progressives.

Scarcely less important was the Committee on Election Laws. This committee was to deal with the restoration of the Australian ballot, with the simplification of the Direct Primary law, and the taking of the judiciary out of politics.

The committee consisted of fifteen members,[41] five of whom had served in the session of 1909. Of the five old members, Young, who was named chairman, had, at the session of 1909, introduced a bill for the complete restoration of the Australian ballot. Three of the remaining old members had, at the previous session, voted for the several measures proposed for the reform of the election laws.

The fifth of the members who had served in the Legislature of 1909, Beatty, did not have so clear a score to his credit, having voted for the machine's amendment to the 1909 Direct Primary bill, which denied The People a State-wide vote for United States Senator. On the other hand, Beatty supported the 1909 measures to restore the Australian ballot to something like its original effectiveness, and to take the judiciary out of politics.

The change in the Assembly Judiciary Committee was the most radical of the Assembly reorganization. At previous sessions, this committee was known as the

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41 The members of the Assembly Committee on Election Laws were: Young, chairman; Beatty, Benedict, Bohnett, Clark, Gerdes, Gaylord, Lyon, Mott, Preisker, Polsley, Rogers of Alameda, Randall, Rosendale, Stevenot.

"graveyard of good bills." Any measure which the "machine" wanted "killed" was sent to the Assembly Judiciary Committee and that was the last of it.

The 1911 committee,[42] however, was headed by Assemblyman William Kehoe of Humboldt, a man of the highest standard of citizenship.

At the session of 1909, Kehoe, because of his refusal "to take program," was made the butt of the curious humor of the "machine" element. But his elevation to the head of the committee, second in importance, if not the most important of the Lower House, was another instance of retributory justice scarcely less pronounced than the elevation of Senator Bell to the head of the Senate Republican caucus.

Another committee in which much interest was taken was the Assembly Committee on Public Morals.[43] This committee was to deal with three important measures, the passage of which, while they had not been touched upon in any of the party platforms, was nevertheless justly held to be part of the work of the reform Legislature. The bills in question were the revised anti-Race Track Gambling bill, the Local Option bill and the anti-Nickel-in-the-Slot bill.

Six of the nine members of this committee, Cronin,[44]

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42 The members of the 1911 Assembly Judiciary Committee were: Kehoe, chairman; Beatty, Benedict, Bishop, Bohnett, Brown, Clark, Coghlan, Cronin, Freeman, Griffin, Held, Joel, Jones, Harlan, Preisker, Rogers, Rosendale, Rutherford, Sutherland, Wilson.

43 The members of the 1911 Assembly Committee on Public Morals were: Cronin, chairman; Cattell, Kehoe, March, Rogers, Sbragia, Stuckenbruck, Wyllie, Young.

44 Cronin, while by no means a Prohibitionist, had been given good reason to distrust the opponents of Local Option. These opponents, without any reason that a sane man could determine, made a vicious fight to prevent Cronin's re-election to the Assem-

Cattell, Kehoe, Stuckenbruck, Wyllie and Young, had served in the 1909 Assembly; Wyllie had introduced the Local Option bill of that session, which, however, was not permitted to come to vote. The six members had supported the 1909 anti-Race Track Gambling bill, and, so far as they had been given opportunity to vote, had clean scores on moral issues.

Direct Legislation, for which its proponents could not get a hearing before the Assembly committees in 1909, was at the session of 1911 deemed of sufficient importance to be given a special committee. The committee consisted of seven members,[45] of whom three, Cattell, Kehoe and Young, had served in the session of 1909. The three at the 1909 session were recorded on test questions, every time on the side of progressive policies. As for the four new members on the committee, even at the opening of the session, they were recognized as heartily in sympathy with progressives policies, including the Initiative, Referendum and Recall.

The important committee on Ways and Means,[46] in which originates the General Appropriation bill, and which passes upon every measure carrying an appropriation, consisted at the 1911 session of twenty-one members.

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bly. Cronin had been, as are tens of thousands of others, a man on the fence on the liquor question, until the liquor interests pushed him off on to the Local Option side. By methods that are astonishing to say the least, the liquor interests are pushing other men now on the fence on to the Local Option side, by scores and hundreds every day.

45 The members of the 1911 Assembly Committee on Direct Legislation were: Tibbits, chairman; Cattell, Clark, Judson, Kehoe, Walsh and Young.

46 The members of the 1911 Ways and Means Committee were: Cogswell, chairman; Beckett, Chandler, Cunningham, Fitzgerald, Flint, Gerdes, Griffiths, Guill, Hayes, Hinkle, Hinshaw, Kennedy, Lynch, McGowen, Malone, Schmitt, Slater, Telfer, Wyllie, Young.

Of the twenty-one, eleven[47] had legislative records. Of these eleven, Chandler had served in the session of 1907, and had stood for progressive policies at a time when Progressives were as few in the California Legislature as were avowed machineites at the session of 1911; Cogswell, Flint, Gerdes, Hinkle, Wyllie, Young and Telfer had made records as Progressives at the 1909 session; Hayes and Griffiths, in most instances had voted with the Progressives, while Schmitt, the eleventh of the old members to be given place on the 1911 Ways and Means Committee, had cast his lot, and usually his vote, with the old "organization element." The Progressives were generally admitted to be safely in control of the Committee on Ways and Means.

The several Assembly committees that have been considered may be regarded as the strategic committees of the Lower House.

The success which the Progressives had had in organizing Senate and Assembly had demonstratèd that that faction had safe majority in each house. With the control of the committee organization of both Houses, the Progressives were in a position to carry out every pledge that had been made to The People.

But at the outset, the question was raised, How far shall the Legislature go? Division developed on every important issue. All the Progressives, for example, advocated the adoption of the Recall Amendment, but some of the best of the Progressives were for excluding the judiciary from the terms of the measure. The Progressives

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[47] Chandler, Cogswell, Flint, Gerdes, Hayes, Hinkle, Wyllie, Young, Telfer, Griffiths, Schmitt.

were agreed that United States Senators should be nominated by State-wide vote, and such nominations made morally binding upon the several members of the Legislature. But not a few of the Progressives stopped short of the Oregon plan, insisting that the nomination for Senators should be confined to the several parties, and no general popular vote provided.[48] All Progressives were agreed on the advisability of the Short Ballot, but there were differences of opinion on the question of how far the Short Ballot should apply. Senators Larkins, for example, would have had the office of Secretary of State continued elective. The Progressives were for conservation, but badly divided on the question of the extent to which the conservation measures should be made to go. Similar division complicated practically every issue.

All this, of course, led to confusion. It was evident that the old "organization," even with the Progressives in control of both Houses, might yet be able to employ the division on the important questions to block good legislation, as had been done in 1909. Some positive note from a recognized leader was required to pull together

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[48] As a matter of fact neither the Lincoln-Roosevelt League nor the Republican party as controlled by the Progressives, nor yet the Democratic party, was committed to the Oregon plan. The last expression of the League on the subject will be found in its platform for the 1910 fight, adopted at the League's meeting held at Oakland, Nov. 22, 1909. The provision in point read: "We urge that the existing primary election law be so amended as to afford a State-wide advisory expression of party opinion as to their (United States Senators) election."

The Republican (Progressive) platform for 1910 committed the party to "such a revision of the primary law of the State as shall afford a State-at-large advisory vote as to the election of United States Senators." The Democratic platform was as ambiguous. It pledged the party to "a simplified Direct Primary law and the selection of United States Senators by the direct primary vote of The People."

the Progressives, who had little to fear from without, but much to fear from within their movement.

This was furnished in the "bracer" referred to in the last chapter, Governor Johnson's inaugural message to the Legislature.

CHAPTER III.

THE KEY TO THE 1911 LEGISLATURE.[49]

Governor Johnson's Inaugural Address Brought Squarely Before the Legislature the Reforms to Which Both Parties Were Pledged, and Left No Room for Dodging or for Quibbling—The Effect Was to Define Definitely the Policies of the Progressive Administration, and Draw the Line Sharply Between Progressives and Reactionaries.

On January 4, 1899, the inaugural "conclave" that was to escort Governor-elect Gage to the State Capitol, formed in front of the old Golden Eagle Hotel at Sacramento. There has been nothing like that conclave since, and probably never will be in California again. The proceedings of that day showed the tinsel of the old "machine" order at its worst.

Several military gentlemen in uniform participated. Some of them rode on horses with which they were quite unfamiliar. Others rode in carriages. One of them tripped sadly as he descended the steps from the hotel. The Governor-elect entered a carriage; a small boy giggled; the procession started.

No circus parade ever made cheaper entrance upon a community. The "conclave," however, was forecast of

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49 Part of this chapter follows closely an editorial article, "Governor Johnson's Message Strong for Popular Rule," which the writer prepared for the Sacramento Bee, and which appeared in the issue of that publication for January 4, 1911.

the character of the inaugural address—full of sound and fury, signifying nothing—which Governor Gage was to roar out a few minutes later; was forecast of the barren legislative session which had convened two days before;[50] and suggested the pompous, ineffective administration which, four years later, was to end so ingloriously[51] for the executive, who seemed to take the curious ride to his inaugural seriously.

Twelve years later, almost to a day, January 3, 1911, Hiram W. Johnson[52] was inaugurated Governor of California. There was no gilt braid,[53] no military gentlemen on difficult horses—and above all there was no giggling from small boys or anybody else.

Governor-elect Johnson, earnest of purpose, resolute and with a definite policy—as a plain American gentleman—walked to the Capitol unattended by military es-

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50 The session of the Burns-Grant Senatorial deadlock.

51 Gage made a desperate fight for a second term, but went down to smashing defeat at the Republican State Convention of 1902.

52 Theodore Roosevelt, in his Los Angeles address, March 22, 1911, said of Governor Johnson: "Mr. Johnson belongs to that group of reformers who remain reformers of exactly the same stripe after being elected. Mr. Johnson has made good every promise to which he committed himself upon the stump, and he, therefore, has not only rendered a great service to California, he has rendered a great service to the nation at large."

53 Governor Johnson's attitude toward the shoddy of military formality was well illustrated by an incident which occurred early in the session.

Johnson was talking to friends in the lobby of the Sacramento hotel when he was approached by a dapper young man in the uniform of a Lieutenant. The uniformed one clicked his heels together and saluted.

The Governor gazed upon the Lieutenant in silence and astonishment.

"I am here," announced the new comer, "to report."

"I'd suggest," faltered the Governor, "that you see General Forbes. He'll know what you mean."

cort; entered the Assembly chamber with the retiring Governor, and took the oath of office.

Johnson had something to say, and, in his inaugural address, said it.

The Governor didn't tell his hearers that California has a glorious climate.[54] He took it for granted that Californians are proud of California. But he recognized that before Californians may come into their own, before the best development of the State can be realized, California must be politically and industrially free.

To this live issue—the issue of the campaign through which he had just passed—Johnson devoted his inaugural address. Not a man or woman in the packed assembly chamber failed to realize that Johnson assumed office with a definite plan of action, and a determined purpose to press that plan to realization.

And after all, "the Johnson policies,"[55] the term by

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[54] Johnson devoted part of the concluding paragraph of his address to the possibilities of our climate and the State's destiny, subjects which in the past have filled volumes of gubernatorial addresses and messages. Johnson said:

"I have purposely refrained to-day from indulging in panegyrics upon the beauty, grandeur, wealth, and prosperity of our State, or from solemnly declaring that we will foster industries, and aid in all that is material. It goes without saying that, whatever political or other differences may exist among our citizens, all are proud of California, its unbounded resources, its unsurpassed scenic grandeur, its climatic conditions that compel the wondering admiration of the world; and all will devotedly lend their aid to the proper development of the State, to the protection and preservation of that which our citizens have acquired, and that which industrially is in our midst. Ours of course is a glorious destiny, to the promotion and consummation of which we look forward with pride and affection, and to which we pledge our highest endeavor. Hand in hand with that prosperity and material development that we foster, and that will be ours practically in any event, goes political development. The hope of governmental accomplishment for progress and purity politically is with us in this new era. This hope and wish for accomplishment for the supremacy of the right and its maintenance, I believe to be with every member of the Legislature."

[55] Johnson's message will be found in the appendix. The recommendations made in it, "the Johnson policies," are as follows:

Initiative, Referendum and Recall—The application of the prin-

which the recommendations contained in this inaugural message soon became known, were nothing more nor less than the reforms for which the citizens of California had long been contending, and which were pledged in the State platforms of the Republican and Democratic parties.

The address was based on the assumption that The People of California are competent to govern themselves.

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ciple of Direct Legislation to all departments of government, to include the judiciary in the provision for the recall of judges.

Railroad Regulation—The passage of a railroad regulation law that shall make plain the powers of the Railroad Commissioners, and especially authorize the Commission to establish the physical valuation of railroad properties as the basis of rate making; and to fix absolute railroad rates, to which the railroads shall be bound. An appropriation sufficiently large to enable the Commissioners to do their work properly.

Reform of Election Laws—The restoration of the Australian ballot to its original simplicity and effectiveness by doing away with party circle and party column.

Direct Primary—The simplification of the measure so that it shall be easy instead of difficult for a citizen to become a candidate for office.

Election of United States Senator—An advisory, pledge-sustained, State-wide vote for United States Senator, in which the whole people, rather than the members of some particular party, shall participate. The Oregon system.

Conservation—The passage of a law that shall conserve the resources of the State, not alone for development, but for development and preservation for the whole people.

Short Ballot—To make merely clerical ministerial offices appointive instead of elective. Suggestion made that the State Printer, Surveyor General, Superintendent of Public Instruction, Secretary of State, Clerk of Supreme Court, State Treasurer and Attorney General be appointed instead of elected.

Employers' Liability—To make the risk of industry, a charge against the industry itself, thus taking the burden of the risk from the shoulders of the employer as well as from the shoulders of the employee.

County Government—The granting of home rule to counties, along the same lines as the home rule enjoyed by municipalities.

Civil Service—The application of the merit system to all departments of government.

Prison Reform—Reformatories for first offenders.

Nonpartisan Judiciary—To take the judiciary out of politics by keeping the party designation of candidates for judicial office off the ballot.

Less than three months later, March 27, 1911, in his farewell address to the Legislature, Governor Johnson was able to say: "No pledge given to The People of the State has by this Legislature been broken. Not a single promise is to-night left unfulfilled. It is for this reason that I congratulate The People of the State of California on the Legislature whose session is now at an end, and so far as I can represent The People of the State of California, I extend to you their heartfelt thanks."

Heretofore, California politicians have politely conceded that Californians possess this degree of intelligence, and have taken care that as little opportunity as possible for the exercise of such intelligence should be given.

Johnson not only admitted the intelligence of The People, but on this intelligence he based his hope of the development, prosperity and well-being of the State. That the purpose of The People shall be given its freest expression, he held that the government of the State must be made responsive to The People. The first step toward this desired end he held was to eliminate every private interest from the government, and to make the public service of the State responsive to The People alone.[56]

That this condition might prevail, he contended that the government must be brought closer to The People through direct legislation.

To this end, Governor Johnson urged Constitutional Amendments which shall give The People power to initiate laws—the Initiative; power of veto upon laws which may be enacted by the Legislature—the Referendum; power to remove from elective office the incompetent or the corrupt—the Recall.

He urged further that by legislative enactment the Australian Ballot be restored to its original simplicity and effectiveness, that men may be selected for office because of their personal worth, rather than their political

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56 "In some form or other, nearly every governmental problem that involves the health, the happiness, or the prosperity of the State has arisen, because some private interest has intervened or has sought for its own gain to exploit either the resources or the politics of the State."—Governor Johnson in his inaugural address. See appendix.

affiliations; that the imperfections of the Direct Primary law of 1909 be corrected; that The People be given the machinery to compel from the Legislature recognition of their selections, by popular vote, to represent the State in the Federal Senate.

There was no half-way course advocated in Johnson's first word to the Legislature; no hesitancy about accepting the logical conclusion, after accepting his major premise that The People of California are intelligent enough to govern themselves.

If The People are intelligent enough to govern themselves, they are intelligent enough to recall from office an official who has shown himself incompetent or corrupt. Nor did the Governor exclude the Judiciary from this provision.[57] If The People have the intelligence to select Judges, he argued, they have the intelligence to remove from the bench that Judge who, in their judgment, has, on trial, demonstrated his unfitness or his unworth.

Johnson's recommendation regarding the nomination by popular vote of United States Senators was based on the same principle. If The People are to be given any voice at all in the election of Federal Senators there is logically no half-way point. Either The People are com-

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[57] "I commend to you the proposition," said the Governor, "that, after all, the Initiative and the Referendum depend on our confidence in The People and in their ability to govern. The opponents of direct legislation and the Recall, however they may phrase their opposition, in reality believe The People cannot be trusted. On the other hand, those of us who espouse these measures do so because of our deep-rooted belief in popular government, and not only in the right of The People to govern, but in their ability to govern; and this leads us logically to the belief that if The People have the right, the ability, and the intelligence to elect, they have as well the right, ability and intelligence to reject or to recall, and this applies with equal force to an administrative or a judicial officer. I suggest, therefore, that if you believe in the Recall, and if in your wisdom you desire its adoption by The People, you make no exception in its application."

petent to name their United States Senators or they are not. Johnson held them to be competent.

He accordingly recommended that legislation be enacted to provide that candidates for the United States Senate be nominated at the primaries as State officials are nominated;[58] that the names of the nominees for United States Senator as made by the several parties be placed on the election ballot so that The People at the finals may vote for them the same as for the candidates for any State office; that a form of contract be provided by which candidates for the Legislature may be bound in the event of their election, to abide by The People's choice in naming the Senator, as is done in Oregon.

There was no questioning the logic of Johnson's position. Admit with him that The People are competent to govern themselves, and one must go in full sympathy with his policies from the beginning to the end of his message.

From the moment of the delivery of that message, there was a new alignment in the Legislature of the State of California. In unmistakable terms, Governor Johnson had made the Initiative, the Referendum, the Recall, Restoration of the Australian Ballot, Direct Vote for United States Senator, Effective Railroad Regulation —all the reforms, in a word, to which both parties stood pledged, and for which The People were clamoring— "administration policies." And "administration policies"

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58 The same position was at first taken by several of the Progressives at the session of 1909, but abandoned for the compromise, "within-the-party plan," which the machine finally fought as viciously as it could have opposed the Oregon plan itself.

in no partisan sense. Johnson left no room for partisanship.

"It is in no partisan spirit that I have addressed you," he said in concluding; "it is in no partisan spirit that I appeal to you to aid. Democrats and Republicans alike are citizens, and equal patriotism is in each. Your aid, your comfort, your highest resolve and endeavor, I bespeak, not as Republicans or Democrats, but as representatives of all the people of all classes and political affiliations, as patriots indeed, for the advancement and progress and righteousness and uplift of California. And may God in His mercy grant us the strength and the courage to do the right."

The "bracer" which the Legislature needed had been furnished. The Senator or Assemblyman who had more belief in direct legislation than in his own conviction that direct legislation is based on sound principle, and who was ready to accept any compromise which the machine was willing to offer, found himself confronted with the alternative of following with the administration or running with the "machine." That member who insisted that United States Senators should be elected by direct vote, but hesitated about adopting its equivalent, the Oregon plan, saw there were but two sides; he must either stand with those who advocated popular election of United States Senators, or with those who opposed.

Johnson's message wiped out partisan lines. In the Legislature of 1911, there were to be no Republican policies nor Democratic policies, only "administration

policies."[59] Those Democrats and those Republicans who continued faithful to the spirit as well as the letter of the platform of their respective party, must of necessity support the "administration measures."

And those who failed to support such measures would find themselves outside the pale of both parties. It was evident that some changes of attitude had to be made, or certain of the old guard would find themselves without a party.[60]

And there were many such changes. Men of the

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59 At once legislators and lobbyists with "pet measures" claimed for them the advantage of being "administration measures." So general did this abuse become, that before the session was a month old, Governor Johnson found himself compelled to issue the following statement:

"Apparently there has been some misapprehension regarding what have been termed 'administration measures' before the Legislature. There is no desire on my part to do anything else than to act with members of the Legislature in accomplishing those things concerning which all of us stand pledged, and when I say 'all of us,' I mean Democrats as well as Republicans. Apparently many bills wholly outside of this category have been termed by the newspapers, sometimes erroneously, and sometimes maliciously, 'administration measures.'

"The particular measures for which I am at present striving in common with the members of the Legislature who wish to redeem their promises to The People, are the Railroad bill, the Amendment to the Direct Primary Law, Ballot Reform, the Initiative, Referendum and Recall and the bills recently introduced at my request, to recover the public service appropriated at the close of the term of my predecessor, and the Act about to be introduced designed to prevent such appropriation in the future.

"I make this statement for the purpose of correcting the impression that certain bills outside of our platform pledges are measures of the administration. In respect to bills in general, that are introduced, my attitude has been to decline, in advance, in any way, to approve any proposed measure, but to leave the question of approval or disapproval of a measure until the matter shall have been passed upon by the Legislature, and in due course brought to the Governor."

60 Take for example those co-workers in the Senate of 1909, Senator Hare of San Francisco, down in the record as a "Democrat," and Senator Wright of San Diego, down in the record as a "Republican."

At the 1909 session, these two gentlemen voted together almost constantly on questions of public policy.

Among the most important policies recommended by Johnson and pledged by both parties, for example, were a practical Statewide vote for United States Senator, and effective Railroad Regulation, to include physical valuation of railroad properties and definite authority granted the State Board of Railroad Commissioners to fix absolute rates.

Both Senator Hare and Senator Wright opposed these policies

character of those whom machine managers send to the Legislature were prepared to desert the machine for the "winner," just as they will desert the Progressives should the Reactionaries secure control again.

But even without this shifty crew, the Progressives had a good working majority in both Senate and Assembly. This majority included the Progressive Democrats[61] as well as the Progressive Republicans. Governor Johnson had made it clear that neither party had a monopoly of the progressive movement; the reforms which he advocated in his message had been pledged in the platforms of both parties. The reputable element of both parties united to uphold the Governor in his recommendation that their platform pledges be observed.[62]

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at the session of 1909. If they continued their opposition at the 1911 session, with which party were they to be classed?

The same applied with equal force to Senator Welch, or to Senator Bills, or to Senator Finn, in fact, to all the members of the Senate who had, during the 1909 session, been identified with the Wolfe-Leavitt group.

61 "The President of the Senate" (Lieutenant-Governor Wallace), announced Senator Caminetti, Democratic leader, "will have my earnest support from now on. It is the President's purpose to secure action on the recommendations of Governor Johnson, and my purpose to assist him."

62 This confidence in Governor Johnson assumed one phase which could not be justified. Senators and Assemblymen when called upon to pass upon a vicious, but strongly supported measure, fell into the habit of voting for it, trusting to Governor Johnson to exercise his veto power. The Sacramento Bee in its issue of March 4, 1911, said of this abuse:

"A tendency is developing in both Senate and Assembly, when a well-backed but undesirable measure is under consideration, to pass it with the comfortable assurance that 'a safe man sits in the Governor's chair, and he has a veto.'

"The Assembly and Senate may find this an easy way to pass on responsibility, but the shifting upon one man the wrath of constituents which 120 legislators fear to encounter cannot be regarded as an act of supreme courage.

"Furthermore, the Senate and Assembly of California are a duly constituted branch of State Government. For them to shift a duty because, if honestly performed, it would offend this or that powerful political body, is worse than cowardice; it amounts to betrayal of trust.

"The Governor represents the executive, not the legislative, department. For the Governor to assume legislative powers would very properly be resented. The People have a right to resent the thrusting of legislative responsibilities upon him."

CHAPTER IV.

ELECTION OF UNITED STATES SENATOR.

The Progressives, Having Failed at the Legislative Session of 1909 to Prevent the Organization, or "Machine," Members Striking From the Direct Primary Measure Practical Provisions for the Nomination of United States Senators, at the 1911 Session, Regardless of Party Affiliations, Joined in Electing to the United States Senate, Judge John D. Works, Who Had, at the Primaries, Received the Highest Popular Vote for that Office.

The line between the so-called machine and anti-machine factions in Senate and Assembly was closely drawn at the session of 1909, but in no instance was the division more clearly defined than in the contest over that section of the Wright-Stanton[63] Direct Primary bill which dealt with the nomination of United States Senators by popular vote.

The anti-machine faction, while willing to compromise with the "machine" and not insist upon the Oregon plan,[64] nevertheless insisted that The People of California

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63 The 1909 Direct Primary bill was introduced in the Upper House by Senator Leroy A. Wright of San Diego, and in the Lower by Mr. Phil A. Stanton of Los Angeles.

64 The procedure of nominating and electing Federal Senators under the Oregon plan is as follows:
Candidates for United States Senator are nominated by the several parties precisely as are candidates for State offices.
The names of the candidates receiving party nominations are

be given a practical State-wide vote for United States Senator, and provided with the machinery by which each candidate for the Legislature could be bound to abide by the decision of The People, when, as legislator, he cast his vote for United States Senator.

Upon this last provision, the anti-machine members insisted. Inasmuch, they contended, as the Legislature can not be legally bound to observe the will of The People in the election of Federal Senators, any more than the Electoral College can be legally bound to elect the choice of a political convention to the Presidency, it is necessary to give the candidate for the Legislature opportunity to obligate himself,[65] to abide by the decision of

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placed on the ballot at the final election, as are the nominees for other offices.

That candidate who at the final election receives the highest vote for United States Senator is declared to be the choice of the electors.

To compel observance of this choice, each candidate for the Legislature is given opportunity to sign one of two statements. The first sets forth that the signer will abide by the popular choice when, as a member of the Legislature he casts his vote for United States Senator; the second, that he will regard such nomination as only a recommendation. The legislative candidate is not bound to sign either statement. But it would probably be difficult for any candidate who refused or neglected to sign the first-named to secure election.

The compromise California plan of 1909—which was defeated by the machine—provided the alternative statements—or contracts —for the legislative candidate to sign, but these statements bound him only to vote for that senatorial candidate who had received the highest number of votes cast by his party at the primaries. Under this arrangement, had it been adopted, the senatorial candidates' names would have been placed on the primary ballot, but not on the final ballot. The electors of California would, under this proposed arrangement, however, have been given a State-wide vote within their party, and the candidates for the Legislature were given opportunity to enter into a contract with their constituents to be governed by the popular choice.

65 The form of the alternative agreements, or statements, which, under the original draft of the 1909 Direct Primary law, each candidate for the Legislature was given opportunity to enter, into what was to all intents and purposes a contract with his constituents to abide by the choice of his party for United States Senator, was as follows:

"I further declare to The People of California and to The People of the........(Senatorial or Assembly) District that during my

the polls. Without such obligation, the anti-machine Senators and Assemblymen pointed out, the section of the Direct Primary bill dealing with the Election of United States Senators, was meaningless, binding upon none, a blind and a sham, and provided at best the machinery for nothing more than a "straw vote."

On the other hand, the "machine" element at first very frankly attempted to strike from the Direct Primary bill all provision for nomination of United States Senators, leaving the election of Senators entirely at the discretion of the Legislature as had theretofore prevailed. Failing in this, the next move of the "machine" element was to strike from the measure all provision by which the candidates for the Legislature could, under regular and uniform agreement, obligate themselves to abide by the choice of the electors, and to substitute for the State-wide vote a vote by Senatorial and Assembly districts.

The anti-machine Senators denounced the proposed change as a subterfuge, intended to render the plan to

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term of office, without regard to my individual preference, I will always vote for that candidate for United States Senator in Congress who shall have received for that office the highest number of votes cast by my party at the September primary election next preceding the election of a Senator in Congress."

If the legislative candidate did not care to sign this pledge, he was given the alternative of signing the following:

"I further declare to The People of California and to The People of the........(Senatorial or Assembly) District that during my term of office I shall consider the vote of The People at any primary election for United States Senator as nothing more than a recommendation, which I shall be at liberty wholly to disregard, if I see fit."

The candidate for the Legislature was not required to sign either agreement. That was left to his discretion. But with public sentiment in California on the question of the election of Federal Senators by direct vote what it is, no candidate for the Legislature who failed to sign the first agreement could hope for election.

give The People a voice in the election of United States Senators impractical and inoperative.[66]

On this ground, the anti-machine Senators and Assemblyman combated the proposed change.

But in spite of this opposition, the machine element finally prevailed.[67] The practical State-wide, pledge-sustained plan for nominating United States Senators was stricken from the bill, and the measure became a law with provision for the district, advisory plan.[68]

There were several reasons for the final outcome in this contest between the two factions at the 1909 session.

In the first place, the "machine" faction numbered among its members the cleverest parliamentarians and tricksters of the Legislature. Then, too, the "machine" controlled the organization of both Houses. But more important than all was the fact that at the most critical

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66 "The district plan which Senator Wright and Senator Wolfe now advocate," said Senator Stetson in opposing the district plan, on the floor of the Senate, March 19, 1909, "is a little worse than no provision for the election of United States Senators at all."

67 See "Story of the California Legislature of 1909," Chapters VIII, IX, X, XI.

68 The position of the anti-machine Senators was well set forth by Senator Stetson in explaining his apparent acceptance of the machine substitute:

"Before voting on this matter," said Stetson, "lest any one in the future may think that I have been passed something and didn't know it, I wish to explain my vote, and wish to say that this permission accorded a candidate to go on record to support that candidate for United States Senator, who shall have the endorsement of the greatest number of districts, comes from nobody and goes to nobody. It means nothing—mere words—idle words. The only way in which a candidate could have been pledged would have been to provide a pledge or instruction to the Legislature. The words 'shall be permitted' mean nothing and get nowhere. I shall vote for this report, not because I want to, but because I have to if we are at this session to have any Direct Primary law at all."

Senator Stetson's quotation did not follow the exact wording for the substitute which was "shall be at liberty," instead of "shall be permitted."

point of the contest, Senator Leroy A. Wright,[69] who had introduced the bill, and who had been looked upon as a leader of the anti-machine group in the Senate, went over to the Wolfe-Leavitt, or organization, or "machine," faction, and contended in opposition to his former anti-machine associates, for the district, advisory plan.

In addition to this, the San Francisco Call,[70] which up to that time had been regarded as a leader for the

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69 Senator Stetson, on the floor of the Senate (speech before the Senate, March 19, 1909), expressed the views of his anti-machine colleagues on Senator Wright's change of position. Stetson reviewed the history of the Direct Primary measure; told of the conferences which Senator Wright had had with the men whom Wright was then opposing; told how they had united, Senator Wright with them, to give The People as good a law as was possible under the conditions.

"But when I found," said Senator Stetson, "that Senator Wright is back in the camp of those whom he had given me to understand did not want any direct primary at all, or at best, an ineffective direct primary, I must confess that I was amazed beyond question.

"The very men who wanted nothing in the bill at all relating to the nomination of United States Senators, are now willing to accept the district plan. I am amazed that Senator Wright does not put two and two together and see this."

70 Senator Marshall Black, in a signed statement published at the time, arraigned "The Call" for that publication's change of attitude. "No decent primary law," said Black, "would have been possible but for the combination of thirteen Republicans and seven Democrats in the Senate who have stood together throughout this whole fight. Senator Wright and the 'Call' were powerless in the contest until these twenty Senators got behind them.

"One of the conditions of this combination was a State-wide vote on United States Senator, and the 'Call' fought with us against Senators Wolfe and Leavitt on this proposition. Immediately after the bill left the Senate and got into the Assembly, the 'Call' began to display a lack of interest in the primary fight. If it had maintained its attitude in favor of the original bill these amendments never would have been proposed by the Assembly.

"When the question of concurring in the Assembly amendments comes up, we find the 'Call' and Senator Wright deserting the men who made the primary fight in the Senate and going over to the camp of the 'push' politicians, who have always favored the district plan of nominating United States Senators.

"I take issue with the 'Call' when it says: 'As a matter of fact, the whole question of the United States Senatorship is of little importance to the people of California,' etc.

"The United States Senatorship is the most important office to be filled by the people of California under the provisions of the proposed Direct Primary law. The so-called district plan for nominating United States Senators is worse than a makeshift.

passage of an effective Direct Primary law, and which had denounced the Wolfe-Leavitt faction for its opposition to the Direct Primary measure,[71] deserted the anti-machine Senators and Assemblymen whom it had been supporting, and contended for the passage of the bill in the form the Wolfe-Leavitt faction was advocating.

In the confusion which such changes of position created, the machine element, in control of the organization of both Houses, was able to force the anti-machine members into a position where they were confronted with the alternative of giving up their pledge-sustained, State-wide vote plan of nominating United States Senators, or see the Legislature adjourned without the passage of any Direct Primary law at all.[72] Rather than defeat the en-

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It provides for no pledge on the part of candidates and would be purely a straw vote, binding on nobody.

"The stubborn fact remains that the 'Call,' after leading in the fight for an honest Direct Primary law for two years and a half, has deserted the cause of The People at the most critical moment of the struggle."

[71] See files of the San Francisco Call for the months of February and March, 1909, especially the issues of February 17, 18 and 19, in which the Wolfe-Leavitt faction, which in March The Call was supporting, was denounced.

[72] This was done by forcing the bill into a committee on Free Conference, of which five members, Senators Wolfe, Leavitt, Wright and Assemblymen Grove L. Johnson and Leeds were supporting the "district advisory" plan, and one member, Hewitt, the State-wide, pledge-sustained plan.

Joint Rule 15, session of 1909, provided that "The report of the Committee on Free Conference shall not be subject to amendment in either house, and in case of non-agreement no further proceedings shall be had." Therefore, had Senate or Assembly rejected the report which the one-sided committee presented, there was no procedure by which further consideration could have been given the Direct Primary bill, and the measure would have failed of passage.

If the anti-machine members of Senate or Assembly rejected the report, thus defeating the whole bill, they lost their fight not only for a practical State-wide vote for United States Senator, but for the power to nominate other candidates for office by direct vote of the people. If they accepted the report they lost the practical vote for United States Senator, to be sure, but placed the power of the direct primary in the hands of the people. They accordingly accepted the machine's substitute for their practical State-wide vote for United States Senator—knowing that the plan

tire measure, the anti-machine members accepted defeat on that part of it which would have given The People a voice in naming the United States Senator. But there was no self-delusion in thus accepting defeat. As Senator Black put it, *the machine's plan provided a "mere straw vote binding upon nobody."* Senator Stetson tersely insisted that he did not propose in future it could be stated that he "had been handed something and didn't know it." Stetson accordingly denounced the "machine's" substitute as "mere words, idle words." And "mere words, idle words," every man, who had followed the long drawn out contest between the two factions knew it to be.[73]

After the adjournment of the 1909 session, the very men who had been instrumental in changing those provisions of the Direct Primary law which deal with the

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was unworkable and saying so—to save good features of the Direct Primary bill. By taking this course, the anti-machine members paved the way for the nomination of a machine-free candidate for Governor, and for machine-free candidates for the Senate and Assembly who at the 1911 session put on the Statute books the practical Oregon plan for nominating and electing United States Senators. See Chapter V, "Amendment of the Direct Primary Law."

73 The provision regarding the election of United States Senators, which finally went into the bill, was as follows: "By nominating petitions signed and filed as provided by existing laws. Party candidates for the office of United States Senator shall have their names placed on the official primary election ballots of their respective parties in the manner herein provided for State officers; **provided, however, that the vote for candidates for United States Senators shall be an advisory vote for the purpose of ascertaining the sentiment of the voters in the respective Senatorial and Assembly districts in the respective parties;** provided, further, that members of the Legislature shall be at liberty to vote either for the choice of their respective districts expressed at said primary election, or for the candidate for United States Senator who shall have received the endorsement of their party at such primary election in the greatest number of districts electing members of such party to the Legislature."

nomination of United States Senators, gave evidence of regarding them very lightly.

As the 1910 primary campaign approached, the anti-machine or Lincoln-Roosevelt League branch of the Republican party endeavored to ascertain from the machine Republicans whether they would regard as binding the "straw vote" for United States Senator which was provided in the Direct Primary law.

The machine Republicans at the time were in complete control of the machinery of the party, through the Republican State Central Committee. On the committee, however, was an active anti-machine minority. Through this minority, the Lincoln-Roosevelt faction attempted to secure some expression from the machine element as to the extent it would hold itself bound to regard the "straw vote" for United States Senator.

At a meeting of the Republican State Central Committee, held at the Palace Hotel, San Francisco, June 20, 1910, Mr. Chester H. Rowell introduced a resolution[74] which set forth that the committee regarded the intent of the "straw vote" for United States Senator, as provided in the Direct Primary law, to be morally binding.

Rowell's resolution was opposed. According to the published reports[75] of the meeting, D. O. Druffel of Santa

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[74] The resolution was in full as follows: "Resolved, That it is the plain intent of the Direct Primary law that the vote at the Republican primaries for United States Senator shall be morally binding on all Republican members of the Legislature in the sense and to the extent stated in that law, and that it would be a violation on the part of any Republican Legislator of his obligation to his party to vote for any candidate for United States Senator except the one receiving the plurality of votes at the Republican primary, either in his district or in the majority of districts electing Republican Legislators."

[75] See San Francisco newspapers, June 21, 1910.

Clara, a member of the committee, stated there was but one candidate for United States Senator, Judge John D. Works, and that the other aspirants did not want to go before the people.

Grove L. Johnson suggested that inasmuch as the law said the vote of electors is advisory, he was unable to see how the State Committee by resolution could make it morally binding on the Legislature.[76]

Assemblyman Walter R. Leeds of Los Angeles[77] wanted to know what Rowell meant by "moral obligation."

"An obligation on the conscience,"[78] replied Rowell.

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76 Johnson was one of the members of the Committee on Free Conference responsible for the final form of the "district advisory" plan.

77 Leeds in the 1909 Legislature led the fight in the Assembly to substitute the advisory, district plan, for the State-wide, pledge-sustained provision. Leeds was also a member of the Committee on Free Conference which decided upon the form of the plan as finally incorporated into the bill. Leeds was, at the time of the Palace Hotel meeting, a candidate for nomination for re-election to the Assembly. According to a report of the Palace Hotel meeting printed in the San Francisco Chronicle, June 21, 1910, Leeds stated "that he had pledged himself to vote for the candidate for United States Senator running before the people of his district, provided that candidate got a **substantial** vote. 'The present candidate, John D. Works,' proceeded Leeds, 'isn't popular in my district and will not get 10 per cent. of the Republican vote there. I would not consider that vote representative of the opinion of the people of my district and I would not vote for him. The candidate to receive my vote as a legislator must have received a substantial advisory vote, showing that he is, in fact, the choice of the electors whom I represent, otherwise I will not vote for him.' Applause."

By one of those humorous happenings of politics, it may be added, at the primaries Judge Works carried "Mr. Leeds' district"—the Seventieth Assembly—by a clear majority over all the other Republican candidates. The Republican primary vote for United States Senator in the Seventieth District was: Works, 4,019; Meserve, 2,727; Spalding, 887. Mr. Leeds, at the same primaries, was defeated for nomination, receiving only 2,910 votes, while his opponent received 3,480. To add to Mr. Leeds' confusion, Judge Works also carried the district at the Democratic primary, the Democrats having written his name on their tickets.

78 In spite of the witticisms of the members of the committee, it is apparent that the only obligation that can, until the Federal Constitution shall be changed, be put upon a member of the Legislature to abide by the will of The People in electing United

Rowell's reply seems to have struck some of the politicians present as very amusing.

Rowell's resolution was defeated. The State Central Committee's action was not unreasonably taken as announcement that the machine faction of the Republican party did not hold it to be "the plain intent of the Direct Primary law that the vote at the Republican primaries for United States Senator shall be morally binding on all Republican members of the Legislature in the sense and to the extent stated in that law."

There was nothing in the act to prevent the "machine" members of the committee taking this stand. As the section of the measure which dealt with the election of United States Senators stood, no obligation was placed upon anyone, legislative candidate or party manager, to be governed by the section's provisions. These provisions could not be enforced through the courts, and nobody pretended that they could be. The legislative candidate could not be compelled to obligate himself to be bound morally by them, because the "machine" members at the 1909 session had succeeded in eliminating the section under which the legislative candidate was forced to place himself under moral obligation, or definitely refuse to obligate himself to abide by the provisions. The measure, therefore, imposed neither legal nor moral obligation,

States Senators, is a moral obligation. The Legislator cannot be put under legal obligation, any more than a member of the Electoral College can be put under legal obligation to be governed by a convention's choice for President and Vice-President. And it is quite as apparent that until a candidate for the Legislature accepts this moral obligation, he cannot be held bound by it. At the session of 1909, the anti-machine Senators labored for a provision in the law which would place the legislative candidate in a position where he must definitely accept the obligation, or definitely refuse or neglect to accept it. The organization element, as has been seen, prevented this provision going into the bill.

nor provided the means to compel the acceptance or definite rejection of a moral obligation.

Then again, all recognized that the section providing for the nomination of Federal Senators was so worded that it was not impossible that he who pledged himself to observe its provisions might find himself called upon to support for the United States Senate a candidate who, at the polls, had failed to secure the highest vote, who was not, indeed, the choice of the greatest number of the electors of the State.

This point was illustrated by the statement that instead of supplying the peculiar provisions for the nomination of Federal Senators which were finally forced into the 1909 Direct Primary bill, the 1909 Legislature might have provided that the members of the 1911 Legislature should be at liberty to elect to the Federal Senate either the nominee of Abe Ruef or of William F. Herrin of the Southern Pacific Company's Law Department. Absurd as this provision might be, it is scarcely less absurd than the provision actually read into the 1909 law, under which, if a candidate for the 1911 Legislature agreed to be bound by it, he might be called upon to misinterpret the advice of the electors, by voting for a man for the Federal Senate, who had not received the highest vote of The People, and was, obviously, not their choice.

Not only did the machine element refuse, as shown by the action of the Republican State Central Committee, to be bound by the peculiar provision of the Direct Primary act for nominated United States Senators, but

the Progressives themselves with few exceptions[79] neglected or refused to obligate themselves to be bound by it.

The Democrats did not even go to the trouble to enter a Senatorial candidate at the primaries. Until the campaign was well advanced, but one Republican candidate was in the field, John D. Works, who had the endorsement of the Lincoln-Roosevelt Republican League. The machine element openly ridiculed Works' candidacy. Finally, however, two candidates, Edwin A. Meserve and A. G. Spalding, the sporting goods manufacturer, announced themselves as candidates against Works.

The vote for United States Senator at the primaries which followed developed queer complications.

To begin with, so little regard was given the "straw vote" that the Republican vote for Senator was only 179,615[80] as against 215,609 for Governor.

Of this vote, Works received a plurality, 64,757; Spalding, 63,182; Meserve, 52,676.

As the Democrats had no candidate for Senator, 981 members of that party wrote the name of one or the

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79 Even under the Oregon plan itself, the legislator is not bound to observe the choice of the electors for United States Senator until he has signed the statement notifying his constituents that he will do so. And then, as all recognize, the candidate is under moral obligation only, and in no way legally bound, to keep his pledge. But a moral obligation of this nature has never been broken and probably never will be.

80 The election returns used in this chapter are all taken from the "Statement of Vote of California, Direct Primary Election, August 16, 1910," issued by Hon. C. F. Curry, at the time Secretary of State of California, to whom, under the law, all primary election returns were made.

other of the Republican candidates on their ballots, giving Works a majority, 551; Spalding, 350, and Meserve, 80.

On the basis of State-wide vote, Works was thus the nominee of both parties.

On the other hand, although receiving a smaller number of votes than Works, Spalding had carried more Legislative Districts at the Republican primaries than had his opponent.

Works, however, had carried more Democratic districts than had Spalding.

If the wording of the curious provision which the machine element had forced into the Direct Primary law was to be accepted, Spalding had received the Republican nomination and Works the Democratic.

But even here, the several district nominations, of which there were 120, had strings upon them.

For example, the Sixty-sixth Assembly District gave Works the Republican nomination with 501 votes. On the other hand, four Democrats in that district wrote Mr. Spalding's name on their ballots. No Democrat thought to perform the same good office for Judge Works, so that Spalding, with four votes, had the Democratic nomination in the Sixty-sixth District.

However, the Assemblyman elected from the Sixty-sixth District turned out to be, not a Republican, but a Democrat, Mr. Fred H. Hall.

Under the machine's amendment to the Direct Primary law, Mr. Hall was "at liberty" to vote for Mr. Spalding. Mr. Spalding's four Democratic votes in the Sixty-sixth beat Judge Works' 501. Incidentally, Mr. Hall was most happily placed, for, by another quirk of

the "machine amendment," Mr. Hall was "at liberty" to vote for that candidate for the Federal Senate who had carried the greatest number of legislative districts at the Democratic primaries, in this instance, Judge Works. So Mr. Hall was, under the wording of the machine amendment, "at liberty" to vote for either Judge Works or for Mr. Spalding.

But Mr. Hall is a Democrat; the two Senatorial candidates are Republicans. If Mr. Hall happened to be a strait-laced partisan the situation must have been shocking to his sense of the political proprieties.

When the contest between the machine and anti-machine factions in the Legislature over the Direct Primary bill was at its height, the charge was made that the district, advisory provision for nominating United States Senators was a little worse than no provision at all, and had been proposed to make the nomination of United States Senators by direct vote of The People impractical. The result of the primaries rather bore out the charge.

But no sooner were the returns known than those who were most responsible for the defeat of the practical provision for the nomination of United States Senators, when the Direct Primary law was before the 1909 Legislature, insisted loudly that the Republican members of the Legislature were *morally bound* to elect Mr. Spalding to the Federal Senate. Among the most persistent in advancing this view were Senator Leroy A. Wright[81] and the San Francisco Call.

81 Senator Wright's position was not consistent with the stand which he took before the Senate Committee on Election Laws (February, 1909), when the machine element was endeavoring to strike all provisions for electing United States Senators from the

On the other hand, others contended that as Judge Works had received the highest vote, he was the choice of The People, and should be elected. Still a third group took the position that had been taken by the anti-machine

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bill. At that time Senator Wright was opposing the efforts of the machine element. On one occasion Wright said: "Personally I may say that I will never sign statement No. 1. Nevertheless I do not believe that we will have satisfied the people of the State if we cut out this section." He also said:

"I intend to reserve the right to vote for whom I please for United States Senator. I shall always be glad to get the opinion of my constituents, but when it comes to voting I shall vote for the man I regard as best qualified for the office."

In a letter to Senator Works, printed in the San Diego Union July 20, 1910, Wright in a measure made his position clear. He said: "For your own information I desire to call your attention to the fact that I am largely responsible for the law which permits an advisory vote for United States Senators in California. The vote is advisory for Senatorial or Assembly districts for the purpose of ascertaining the sentiment of the voters in respective Senatorial and Assembly districts and a member of the Legislature is at liberty to vote for the choice of his district, or for the candidate for United States Senator who has received the endorsement of his party at such primary election in the greatest number of districts electing members of such party to the Legislature. Having advocated this advisory vote, it is my intention to vote and work for the candidate for the United States Senate who is the choice of the Republican electors of San Diego and Imperial counties, if I should be elected. If that choice should conflict with the choice of the State at large I shall stay with the choice of my constituents so long as there is a reasonable possibility of his election.

"You ask me if I am in favor of election of United States Senator by direct vote of the people. You well know that until the Federal organic law is modified, United States Senators cannot be elected by direct vote of the people, and you know full well that you cannot do indirectly that which the law prohibits being done directly. The Legislature has provided for an advisory vote for United States Senator, and further than that I cannot see that we can at present consistently go."

Wright's attitude from the beginning to the end of the controversy was condemned by the Progressive element. Said the Fresno Republican (Progressive) in its issue of Nov. 17, 1910:

"The confusion injected into the primary law for this express purpose is having its inevitable result, in a mesh of plots and counter-plots over the United States Senatorship. The law, which by its terms is 'advisory' merely, and not legally, but only morally binding, was made in its language, to provide three alternative methods of its own interpretation, among which each legislator was to choose the one which suited him best; but, of all possible interpretations, this 'moral advisory' law omitted the only meaning which is either moral or advisory. In other words, the people were to vote, to advise the Legislature, and then the Legislature could do with that vote anything it liked except the one obvious thing—follow the advice. Specifically, of all possible methods of understanding the advisory vote of the people, at the party pri-

members of the Legislature when the Direct Primary measure was under consideration, that the district, advisory vote for United States Senator had no more binding effect than a "straw vote," and for that reason, without specific agreement [81a] to abide by it, no member of the Legislature was bound to regard it. This group held, therefore, that the 1911 Legislature was at liberty to elect Judge Works or Mr. Spalding, or a third candidate as it might see fit.[82]

The majority of the members of the 1911 Legislature arrived at Sacramento without any clearly defined posi-

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maries, the only one not provided for was the simple one—that whoever got the most votes should be the candidate. It is scarcely necessary to add that this confusion was injected into the perfectly simple law originally proposed, by legislators who did not desire any sort of popular vote on Senator, and did not propose to take the popular advice, either in the confused interpretations they added to the law, or in any other. It may, however, be significant to recall that the adoption of the worst of these 'interpretations' was made possible only by the treachery of Senator Leroy A. Wright of San Diego, who is now the chief sponsor of an effort to use that 'interpretation' to drive the Legislature into electing a minority candidate whom the legislators do not want, and whom the people, by voting against him at the polls, said they did not want."

81a Progressive leaders advised those who had pledged themselves to abide by the curious wording of the advisory, district-vote provision of the 1909 Direct Primary law, to vote for Mr. Spalding. Thus Railroad Commissioner John M. Eshleman advised Assemblyman Judson, who had so pledged himself, that it was his (Judson's) duty to vote for Spalding.

82 This view was expressed by the San Francisco Star as follows: "The California law contains no provision, as does the Oregon law, by which the candidate for the Legislature is given the alternative of pledging himself or refusing to be pledged. The machine element which is supporting Spalding struck this provision from the bill.

"For the machine element now to attempt to bluff the anti-machine element of the Legislature into voting for Mr. Spalding solely because of their own provision in the Direct Primary law, which was purposely so worded as to be binding upon none, is about as astonishing a bit of political piracy as ever was attempted in California.

"That the anti-machine members of the Legislature will permit themselves to be bluffed is unthinkable.

"Such members of them as may have definitely pledged themselves to observe the provision of the Direct Primary law as regards United States Senators, are of course bound by it. Pre-

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tion on the Senatorial contest. Under ordinary conditions the machine would have followed the procedure usually taken in such situations. The members of the Democratic minority would have been eliminated from the contest under the theory that they, being Democrats, could take no part in the election of a Republican to the Upper House of Congress. Thus set to one side, the Democratic members would have cast numberless, meaningless, complimentary votes for Senator, while the Republican members fought among themselves.[83]

With the Democrats thus happily disposed of, if a Senator satisfactory to the machine element could not be elected, a deadlock could have been forced which would have prevented the election of any United States Senator at all.[84]

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cisely as they are bound by any other pledge. But in the absence of such definite pledge there is nothing binding upon them.

"They are at liberty to vote for Mr. Spalding, Judge Works, John Brown, Richard Roe or John Doe, as they see fit.

"The Star trusts that they will vote for the most desirable candidate, the candidate whom they believe will make California and the Nation the best Senator.

"Incidentally The Star hopes the experience of the last few months with a meaningless and unsatisfactory provision for binding the Legislature to abide by the choice of the electors, will awaken the Legislature to the necessity of giving California an effective law to this end such as is enjoyed by Oregon.

"The machine element will oppose such legislation.

"No intelligent and at the same time honest member of the Legislature will refuse to support it."

83 This was the course taken in the Grant-Burns Senatorial deadlock in 1899. For nearly three months, the Democratic members of the Legislature permitted themselves to be denied a voice in naming the Senator, when, by combining the 33 votes which they had in the Legislature of that year with those of the Republicans who opposed the Burns element, they would have been able to elect some worthy citizen to the Federal Senate. Rather than be guilty of such political heresy, however, they saw the session adjourn without electing any United States Senator at all.

84 To elect a Federal Senator, a majority of the votes of the Legislature is required—in California 61 out of the 120 in Senate and Assembly. In the 1911 Legislature were 19 Democrats and 101 Republicans. By scattering the votes of 41 Republicans among various Senatorial candidates, the Reactionaries would have prevented any candidate securing the necessary 61 votes to elect.

Had the Progressive Republicans faltered in their course during the first days of the session, it is not unlikely that such a situation would have been created, as at the session of 1899. Had a less positive stand been taken in the organization of Senate and Assembly, for example, had any weakness been shown in the appointment of the committees, had Stafford won his fight for Sergeant-at-Arms of the Assembly, or any other comparatively unimportant incident demonstrated the inability of the Progressives to hold their position, there would have been an immediate loss to the Progressive side of that element of the Legislature which was waiting to join with the probable majority.

But not only did the Progressives hold their position, but they grew stronger, during the first month of the session, with every move.

By far the greatest strength came from Johnson's inaugural address. The reading of this message did more in the issue under discussion, to strengthen the position of the Progressives than all else combined. That address at once lifted the Legislature out of the sordidness of partisanship in which the machine element had long held it. The Democratic members saw that at the 1911 session, at least, good citizenship was to be placed above partisanship. At once, every Democratic member worth while aligned himself on the side of Progressive policies, a course which carried him into the Progressive camp in the fight for the election of United States Senator.[85]

[85] "If my vote is needed for Judge Works on the first ballot," said Senator Campbell (D) the day after Johnson's address had been made public, "I shall vote for Judge Works." Senators Caminetti and Juilliard, Assemblyman Griffin and other Democratic leaders expressed the same view.

A movement had been started to give Congressman-elect Raker the Democratic complimentary vote, and several Progressive Democrats were desirous of thus recognizing him, but they were even more desirous that no slip should come in the election of a Progressive to the Federal Senate. They regarded the election of a Progressive as part of the necessary work which, as Senators and Assemblymen, they were called upon to perform, not as Democrats, but as representatives of The People of California.

Republicans who had been as wobbly in the Senatorial fight as they were uncertain of their position on Progressive policies, after the reading of Johnson's address joined with the more positive Progressives in the Senatorial contest.

Judge Works, for the sole reason that he had received the highest vote at the polls, had been selected as the logical Progressive candidate.[86] After the reading of Johnson's message, his election was conceded by all who were in touch with conditions at Sacramento.[87]

The Reactionary element, led by the San Francisco

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86 Judge Works was not accepted as the logical candidate because he was the spontaneous, unanimous choice of the members of the Legislature personally. He was elected because he came nearer being the popular choice for the Federal Senate than any other candidate. The same motive which led State Senator Caminetti at the 1909 session to break through the cobwebs of partisan superstition, and vote for Federal Senator Perkins, prompted many at the 1911 session to vote for Judge Works.

87 The question as to whether the block of votes popularly supposed to have been controlled by Senator Tom Finn of San Francisco was necessary for the election of Judge Works has been raised. The outcome does not indicate it. The most votes ever credited to Finn were ten. On the first ballot, Works received 92 votes, 31 more than were necessary for election. Finn's 10 votes could have been dispensed with, and still Works would have had 21 to spare. But the Finn votes didn't have to be spared in such a situation. Had they been really needed, however, they might not have been so available.

Call, had, however, started a campaign for Mr. Spalding. The Call vilified those who had announced themselves for Judge Works, much as that publication had in March, 1909, vilified those anti-machine Senators and Assemblymen who were laboring to save the Direct Primary law from amendment at the hands of the "machine" element. The Reactionary press throughout the State joined with the Call in its campaign of abuse [88] and misrepresentation.[89]

But, from the first, Spalding's fight lacked the vitality which, in the case of Colonel D. M. Burns, twelve years before, had made the 1899 Senatorial deadlock possible.

When the issue finally came to vote, Senator Works received 62 votes in the Assembly, one more than was necessary for his election, even though he had not re-

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88 An example of this misrepresentation was the San Francisco Examiner's publication of a statement that the Thirty-ninth Senatorial District, represented by Senator Estudillo, had gone for Spalding, and therefore Estudillo was bound to vote for Spalding. As a matter of fact, the Thirty-ninth Senatorial District went for Works, giving him 2,538 votes, and Spalding only 1,861. Thus, under the terms of the district, advisory plan itself, which the machine had succeeded in forcing into the law, Estudillo was "at liberty" to vote for Works. The Reactionary small fry of the press from one end of the State to the other took the Examiner's story up, however, and abused Estudillo like a pickpocket for refusing "to be bound by the decision of his district," and vote for Spalding.

89 A characteristic story was started that unless members of the Assembly agreed to vote for Works they could not secure desirable committee appointments. In one instance the story was made to apply to Assembly Crosby of Alameda, who was seeking an important committee chairmanship. Speaker Hewitt, a few days before the balloting for United States Senator took place, called Crosby into his private office and asked him abruptly if anyone had told him he could not get a committee chairmanship unless he voted for Works. Without waiting for a reply, Hewitt told Crosby that he (the Speaker) was naming the committees, and regardless of Crosby's vote for Senator, Crosby was to have a chairmanship.

ceived a single vote in the Senate; Spalding received 16 and Meserve 1.[90]

In the Senate, Works received 30 votes; Spalding 5; Raker (D.) 3, and William Kent 1.[91]

For the first time in the political history of California the anti-machine element of both parties had united in the election of a United States Senator, and had come within twenty-eight votes of making him the unanimous choice of the Legislature.[92]

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90 The Assembly vote for United States Senator was as follows:

For Spalding—Bennink, Brown, Coghlan, Cronin, Freeman, Griffiths, Hayes, Hinkle, Joel, Judson, Kehoe, Lynch, March, Schmitt, Stevenot and Williams—16.

For Works—Beatty, Beckett, Benedict, Bishop, Bohnett, Butler, Callaghan, Cattell, Chandler, Clark, Cogswell, Crosby, Cunningham, Denegri, Farwell, Feeley, Fitzgerald, Flint, Gaylord, Gerdes, Griffin, Guill, Hall, Hamilton, Harlan, Hewitt, Hinshaw, Jasper, Jones, Kennedy, Lamb, Lyon of Los Angeles, Lyon of San Francisco, Maher, Malone, McDonald, McGowen, Mendenhall, Mott, Mullally, Nolan, Polsley, Preisker, Randall, Rimlinger, Rodgers of San Francisco, Rogers of Alameda, Rosendale, Rutherford, Ryan, Sbragia, Slater, Smith, Stuckenbruck, Sutherland, Telfer, Tibbits, Walker, Walsh, Wilson, Wyllie and Young—62.

For Meserve—Held—1.

91 The Senate vote for United States Senator was as follows:

For Spalding—Bills, Cassidy, Martinelli, Wolfe and Wright—5.

For Works—Avey, Beban, Bell, Birdsall, Black, Boynton, Bryant, Burnett, Caminetti, Cartwright, Cutten, Estudillo, Finn, Gates, Hans, Hewitt, Hurd, Juilliard, Larkins, Lewis, Regan, Roseberry, Rush, Shanahan, Stetson, Strobridge, Thompson, Tyrrell, Walker and Welch—30.

For Raker—Curtin, Hare and Sanford—3.

For Kent—Holohan—1.

92 Several members of Senate and Assembly had explanations of their vote printed in the Journal. Their explanations will be found in the appendix.

CHAPTER V.

AMENDMENT OF THE DIRECT PRIMARY LAW.[93]

The 1909 Measure Was Amended to Provide that United States Senators Shall be Nominated Under the Oregon Plan, and the Provisions Which Placed Unnecessary Burdens Upon Primary Candidates for Office Were Stricken From the Law.

The two principal objections made by the Progressive element to the Wright-Stanton Direct Primary law, as passed at the 1909 session, were:

(1) That unnecessary partisan provisions and restrictions made it difficult for a citizen to become a candidate for office.[94]

(2) That the measure contained no practical provision for the nomination of United States Senators by direct vote of The People.

Although these defects were recognized, the anti-

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93 For the manner in which the undesirable features of the 1909 Direct Primary law were forced into that measure, see "Story of the California Legislature of 1909," Chapters VIII, IX, X, XI.

94 The effect of this partisan feature was well illustrated at the San Francisco municipal primaries in the summer of 1909. Francis J. Heney attempted to become a candidate for the office of District Attorney. The situation in that city required that Heney be elected District Attorney in order that vigorous prosecution of bribe-givers might continue. Heney had voted for Taft at the previous election. He could not, therefore, under the extreme partisan features of the Direct Primary law, become a primary candidate on any ticket but the Republican.

Recognizing this, the corrupt element at San Francisco registered even Union Laborites and Democrats who could be forced to such a course, as Republicans. Reputable Republicans were fairly

machine leaders hesitated about announcing definite policy for their correction.

This was particularly true of the defect in the law in the matter of nominating Senators by direct vote, and making that vote effective and binding.

Although the reform leaders at the 1909 session of the Legislature recognized that the only practical method of naming United States Senators by direct vote is under the Oregon plan, they were prepared to compromise with the machine on this issue, and, as a matter of fact, although it was discussed, the Oregon plan was at no time provided in the Direct Primary measure which was considered at that session. As was seen in the previous chapter, the best that the anti-machine element asked for at the 1909 session was a State-wide vote—within the several parties—for United States Senator, and the machinery to make the result of the vote binding.

When the Lincoln-Roosevelt Republican League held their State meeting at Oakland in November, 1909, instead of declaring for the Oregon plan, the League took the same uncertain position attempted by the anti-machine element at the 1909 session, and announced itself

swamped by the collection of miscellaneous political scum that went on the Register as members of the Republican party.

For Heney to have run as a Republican would have meant his defeat. Under a second provision of the codes, Heney, defeated at the primaries, could not have become an independent candidate. Accordingly, Heney, blocked by the provisions of the Direct Primary law, did not enter the primary race at all.

The Democrats of San Francisco wanted Heney nominated, but under the partisan provisions of the Direct Primary law were denied the privilege of putting his name on their primary ticket.

But there was no law against individual Democrats writing Heney's name on their primary ballots. This they did. Enough of them did so to make Heney the Democratic nominee for District Attorney.

Under the terms of the Direct Primary law, Heney's name could not have been placed on the Democratic primary ticket.

As a matter of fact, the Democrats nominated him.

as favoring the compromise, within-the-party plan which had been provided in the original draft of the 1909 Direct Primary measure.[95]

In spite of the fact that the machine had been routed at the 1910 primaries, the reform leaders were apparently afraid to take positive position on this important question. Although in control of the Republican State Convention, and declaring for the policy of electing United States Senators by direct vote, the Progressives who framed the Republican State platform failed to declare definitely for the Oregon plan.[96]

Even after the final election, the Republican State Senators who met at Santa Barbara hesitated about announcing for the Oregon plan, and did not. And the Committee appointed by the Republican State Central Committee to propose amendments to the Direct Primary law, very carefully refrained from recommending

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95 The League's declaration of principles contained the following provision for the popular selection of Federal Senators:

"We demand that the next Legislature adopt in proper form and transmit to Congress an act or joint resolution favoring amendment to the Constitution of the United States providing for the election of United States Senators by direct vote of the people, and pending the adoption of such amendment we urge that the existing primary election law be so amended as to afford a State-wide advisory expression of party opinion as to their election."

96 The plank in the Republican 1910 State platform on the election of United States Senators, reads as follows:

"We recommend the enactment by the next Legislature, and transmission to Congress, of an act or joint resolution favoring an amendment to the Constitution of the United States, providing for the election of the United States Senators by direct vote of the people, and pending the adoption of this Federal amendment, such a revision of the primary law of the State as shall afford a State-at-large advisory vote as to the election of United States Senators."

the Oregon procedure[97] but clung to the "within-the-party vote."

The Reactionary press was quick to take advantage of this hesitancy.

Soon after the meeting of State Senators at Santa Barbara, the San Francisco Call, in an editorial article[98]

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97 The committee's findings were:

"As respects the selection of a party nominee for United States Senator, the primary bill originally introduced differs from the present law in two important particulars. Your committee will attempt to discuss these in the abstract, irrespective of any pending situation.

"1st. The bill as first introduced provided for the test as to the selection of a candidate for United States Senator, that such candidate should receive the highest State-wide vote cast by his party on the proposition. The present law provides that the legislative candidate shall be bound either by the vote of his own district or by the vote of a plurality of districts.

"2nd, and most important, as it seems to your committee, the present law seeks to bind the legislator-elect to do one of two things on a matter which the Constitution commits to his discretion alone irrespective of the attempted compulsion of any statute. On the other hand, the bill as originally proposed, provided that the legislative candidate might do one of three things, in this provision differing from the present law by at once being a step toward a direct vote for Senator, yet at the same time following the Constitution by naming the only things the candidates could possibly do. The three things provided for the candidate to do were as follows:

"(a) He may covenant with his constituents that he will vote for that candidate for United States Senator who shall have received the largest State-wide vote in his party. This agreement when signed constitutes a moral obligation on the legislator-elect, which an extraneous statute cannot possibly provide. Moreover, it approaches within party lines nearest to the popular demand for a direct vote for Senator, and as such is almost universally signed by candidates in all States which contain the provision.

"(b) He may sign a statement to his constituents that he will regard the forthcoming State-wide advisory vote as recommendatory and nothing more, at the same time announcing to them that he will wholly disregard it if he sees fit.

"(c) He may neglect or refuse to do either of these things.

"Recommendation. Your committee would recommend the elimination of the proviso in Section 2, sub-Section 1, relating to United States Senator, and the inclusion in Section 5, sub-Section 4, the provision above recited as occurring in the original draft of the bill. The committee so recommends, as it regards these provisions the only kind of provisions which are constitutional and legally binding as well as an agreement with the candidate's constituents, and therefore also morally binding."

98 The article was headed, "No Program for this Legislature, and no Leader but Johnson." The article was so evident in its intent "to honey" Johnson into line as to be amusing.

intimated that an agreement had been made "by Johnson, Wallace and an impressive minority of the Senate, that the amendments to the Direct Primary election law shall be confined to remedying the defects pointed out in the State platform." The Call denounced the Oregon plan on the ground that the system "would take the United States Senatorship out of the realm of partisanship." [99]

Into the midst of this situation so well calculated to result in the defeat of a practical reform, came, as a new factor, Governor Johnson's inaugural address. Johnson did not hesitate. He pointed out that "notwithstanding the popular demand expressed now for a quarter of a century that United States Senators should be elected by

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99 The Fresno Republican showed the weakness of the Call's position. "The Oregon system is in effect," said the Republican, "the exact system that would be brought about by the amendment to the Federal Constitution which both parties have endorsed, which the majority of the States in the Union, including California, have formally approved, and which the Call itself advocates. It would no more 'take the United States Senatorship out of the realm of partisanship' than the office of Governor, or Congressman is now out of that realm. It should leave partisan candidates for United States Senator to be nominated at party primaries, like all other candidates, and then to be voted for by their whole people at the general election, like all other candidates. The one difference would be that, pending an amendment to the Federal Constitution, candidates for the Legislature would have to pledge themselves (or run the risk of defeat for not pledging) to ratify the advice of the voters at the election.

"If we are going to have the direct choice of United States Senators at all, this is the way to get it. And however some of us may debate that issue academically, the American people have decided that they want the direct election of Senators, and we may as well submit to that decision. We shall have to do so, soon, anyway. Oregon has pointed the way, and the rest of us have only to decide whether we will go that way by one step, two or three. California has taken the first step of a three-step series. If, as seems likely, the Legislature will prefer to go the remaining way in two steps instead of one, taking only the one step now, we have no objections. It is a purely practical question of how fast The People are ready to move. If it is easier to move slow than fast, let us move slow. But why should any one, thinking ahead and viewing the question as a whole, blink his eyes to the plain fact that there is no stopping until we go the whole Oregon way, and no reason except public inertia (if it be determined that exists) why we should hesitate to go the whole way now?"

direct vote of The People, we have been unable to amend the Federal Constitution, but The People in more than half the States are striving to effect the same result by indirection."

Stating that it is not extravagant to say that nine electors out of ten in California desire the electorate directly to chose United States Senators, Johnson suggested that the Direct Primary law be amended so there be a State-wide advisory vote for United States Senator, "and," he proceeded, "the logical result of a desire to elect United States Senators by direct vote of The People is that that election shall be of any person who may be a candidate, no matter what party he may be affiliated with. For that reason I favor the Oregon plan, as it is termed, whereby the candidate for this office, as for any other office, may be voted for, and by which the candidate receiving the highest number of votes may be ultimately selected."

Johnson dealt with those provisions of the law, which made primary election unnecessarily expensive and difficult for the citizen who wished to become a candidate for office, no less boldly than he had considered the section providing for the nomination of Federal Senators. "I think," said the Governor, "that the desire is general to remedy these defects."

This positive note had its effect. Those in charge of the bill came out positively for the Oregon plan of nominating United States Senators, and for such changes as would relieve the citizen who would become a primary candidate for office, of the unnecessary trouble and expense which the 1909 law imposed upon him.

The recasting of the measure along the lines sug-

gested required much labor, and the bill was not ready for introduction until February 10. Boynton introduced the measure in the Senate, and Young in the Assembly.

The bulk of the labor of preparing the bill for the consideration of the Legislature fell upon those two gentlemen.

The offensive partisan feature,[100] which had created so much friction, was stricken from the law. The nomination of candidates for judicial or school office was placed on a non-partisan basis. This was accomplished by requiring that the names of all candidates for school or judicial offices regardless of their party affiliations be placed on all the primary ballots.[101]

The number of signatures to validate a petition for place on a Primary ticket was fixed at not less than one per centum or more than two per centum of the voters of the party in the political subdivision in which the candidate seeks office. Exception was made in the case of candidates for judicial office and school office, the minimum of signatures being fixed at one-half of one per

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100 Under the 1909 law the primary candidate was required to file an affidavit, "stating . . . the name of his party . . . **that he affiliated with said party at the last preceding general election, and either that he did not vote thereat or voted for a majority of the candidates of said party at said next preceding general election**, and intends to so vote at the ensuing election."
In the 1911 measure, the words printed above in black were stricken out and for them substituted, "he (the candidate) intends to affiliate with said party and vote for a majority of the candidates of said party at the ensuing general election."

101 This provision is unique. The effect of it is to make even the nomination of school and judicial candidates non-partisan. The most earnest advocate of a non-partisan judiciary at the 1909 session did not so much as suggest a reform so radical. The provision of the 1911 law provides: "The group of names of candidates for nomination to any judicial office or any school office shall include all the names receiving the requisite number of nomination papers for such office, and shall be identical for each such office on the primary election ballots of each political party participating at the primary election."

cent.[102] Under the 1909 law, the minimum of signatures required for a State office was one per cent. running up to three per cent. for local offices, with a maximum of ten per cent. in all cases.[103] The unnecessarily long primary and final campaigns, which, as provided under the old law worked great hardships upon candidates, were shortened. The several changes went far toward lifting the unnecessary burdens which the 1909 law put upon candidates, and incidentally removed reasonable objections to the Direct Primary system as it had been given expression in the old measure.

Provisions for nominating and electing United States Senators under the Oregon plan were incorporated into the bill.[104] Under these provisions candidates of the several parties for United States Senators were given precisely the same footing as other candidates for State office. Provision was also made for certifying to their nomination, and placing their names on the final ballot. Further provision was made in another act, for presenting the name of the candidate who receives the highest

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102 The Committee appointed by the Progressive Republican State Central Committee to deal with the Direct Primary measure, recommended that the percentage of signatures be fixed at a minimum of one-half of one per cent. and not more than two per cent. in the case of all candidates for State offices.

103 The committee appointed by the Republican State Central Committee to revise the Direct Primary law had suggested that for State offices the percentage be made one-half of one per cent. The committee even considered doing away with nomination petitions entirely, as did those members of the Legislature who were consulted in the drawing of the 1911 measure. But the idea was rejected on the ground that some restrictions on nominations are necessary.

104 Consistent with this course was the adoption without a dissenting vote in either House of Senate Joint Resolution No. 1, requesting Congress to call a convention for the purpose of submitting an amendment to the Constitution of the United States calling for the election of United States Senators by the direct vote of The People.

vote for United States Senator at the final election, to the Legislature as the choice of The People for that office.[105]

To bind the members of the Legislature to observe this choice, it was provided that candidates for State Senate and Assembly might sign and file with their nomination papers one of two statements.[106]

Under the first statement, the legislative candidate pledges himself during his term of office, if elected, to vote for that candidate for the United States Senate who shall have received the highest vote at the general election. The second statement sets forth that the candidate, if elected, will consider the vote for United States Senator as nothing more than a recommendation, which he shall be at liberty wholly to disregard.

The measure does not require the legislative candidate to sign either one of these statements. Indeed, it is expressly provided in the act that "his failure to include either of such statements shall not be a valid ground on

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105 Committee substitute for Senate Bill 9, introduced by Caminetti, "An act to enable The People of the State of California to express by ballot their preference for some person for United States Senator." But one of the 120 members of the Legislature voted against this bill, Senator Leroy A. Wright of San Diego.

106 The statements in full are as follows:

"Statement No. 1—I further declare to The People of California and to The People of the......(Senatorial or Assembly) District that during my term of office, without regard to my individual preference, I will always vote for that candidate for United States Senator in Congress who shall have received for that office the highest number of the votes cast for that position at the general election next preceding the election of a Senator in Congress."

If the candidate be unwilling to sign the above statement, he may include with his affidivat the following statement:

"Statement No. 2—I further declare to The People of California and to The People of the......(Senatorial or Assembly) District, that during my term of office I shall consider the vote of The People for United States Senator in Congress as nothing more than a recommendation, which I shall be at liberty wholly to disregard, if the reasons for so doing seem to me sufficient."

the part of the Secretary of State for refusal to receive and file his nomination paper or papers."

But the means is provided for the fullest publicity of the legislative candidate's action regarding the statements. The measure provides that on the ballot used at the primaries as well as on the sample primary ballot shall appear the words under the name of each candidate for State Senator or Assembly, "Signed Statement No. 1," or "Signed Statement No. 2," or "Signed neither statement," as the case may be.

In the event of the candidates having refused or neglected to sign Statement No. 1, which will be equivalent to refusal to agree to abide by the voter's choice of United States Senator, the voter may exercise his judgment in sending such candidate to the Legislature to represent him.

Such was the Direct Primary measure upon which the Progressive Legislature was called to act.

The bill met with no opposition in the Assembly. It passed that body by a vote of 54 to 0.

In the Senate, however, some opposition developed.

Although the measure had passed the Assembly on March 11, it did not come to vote in the Senate until March 23, the Thursday before adjournment. When the bill did come up for final passage, Senator Wright presented an amendment.

Wright's amendment provided for a special election to be held in April of presidential years for the purpose of electing delegates to a State convention, to elect delegates to the National convention to nominate candidates for President and Vice-President.

In the matter of naming the delegates to the national

convention, the 1911 Direct Primary measure follows the 1909 law. The 1909 law provides that the delegates to the County conventions shall be the same delegates who were elected at the last preceding primary. Under this arrangement, the delegates to the County conventions who will name the delegates to the State convention which will elect delegates to the National conventions in 1912, were elected at the 1910 primaries.

Such was the provision of the 1909 measure.

At the time the 1909 Direct Primary bill was before the Legislature, the machine element was confident in its position as dominant force in California politics. Its members confidently expected to carry the 1910 primaries. Had they carried the primaries, under the terms of the 1909 Direct Primary law, the naming of delegates to the National convention would have been in the hands of the old organization.

But the Progressives carried the primaries. Therefore, the naming of the delegates to the National convention is in the hands, not of the machine, as the machine had confidently expected would be the case, under the terms of the machine's own Direct Primary law, but in the hands of the Progressives.

The Progressives did not amend this section of the law.

Wright[107] attempted to do so.

Had the measure become a law with the Wright

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107 Senator Wright was one of the members of the Free Conference Committee who had the final word to say on the 1909 Direct Primary bill. The committee could, without loss of time, have amended the section as Wright, just before adjournment of the 1911 session, demanded that it be amended. Charles R. Detrick, Secretary of the Republican State Central Committee, states that at the session of 1909, before the Direct Primary bill was passed, he called Senator Wright's attention to the folly of pro-

amendment, the Progressives would have been forced to fight next year for the privilege, which they already have under the terms of the machine's own section in the Direct Primary law, of naming the delegates to the next National Republican Convention, which meets in 1912.

Senator Wright, in the debate over his amendment which followed, made the startling announcement that at the session of 1909, it had not been intended that the section in the form it was adopted should be left in the bill.[108] But Senator Wright failed to state that before

viding for the naming of delegates to the National convention by county conventions elected two years previous to the date of the convention, but Senator Wright refused to change the section.

It is interesting to note also, that when this section was put into the 1909 Direct Primary law, not a word of censure came from the reactionary press, nor, was there any protest against it until the Progressives, contrary to machine expectations, carried the 1910 primaries, thus placing the selection of delegates to the 1912 National convention in Progressive hands. Then came protest. When the Legislature adjourned without changing the law to give the Reactionaries another chance to name the National delegates, this protest grew loud. It was openly charged that the law had been "juggled" in the interest of the Presidential ambitions of Senator La Follette. The San Jose Mercury, of which Congressman E. A. Hayes and his brother, J. O. Hayes, are practically sole proprietors, in its issue of April 1, 1911, said of this feature of the law: "Whether you like the sort of legislation he (Governor Johnson) has given us or not, . . . or worse than all the juggling of the Primary law to accommodate the ambitions of Senator La Follette—whether you like or dislike these things—the fact remains they were done just as was promised they would be done and without care for the sentiment of anyone. Above all, you will admire the complaisance with which the Legislature "stood up" on roll call. Every man of them was a performer such as those in the band wagon of the old organization were not in the palmiest days of machine supremacy."

But the Mercury had no protest to make when, in 1909, the section complained of was read into the bill, and that paper deliberately misrepresented when it charged "juggling" with this section when the measure was before the 1911 Legislature. The "juggling" with the Direct Primary law complained of was at the session of 1909. In the section under discussion, machine leaders thought they had a trap set for the Progressives, but the machine itself fell into the trap. If any criticism is to be made of the neglect of the Progressives to change this section of the law, it is that they failed to release the Reactionaries from the trap of Reactionary setting.

108 This was in answer to Senator Cutten's demand of Wright why the section was good in 1909, and not good in 1911.

the measure became a law the section had been called to his attention, and the effect of it pointed out. Nor did he explain how the provision came to be there at all; nor why he, as the author of the 1909 bill, had permitted it to remain there. He contended, however, that those charged with naming delegates to a National convention, should not be elected a year before the Presidential candidate is named.

On the other hand, Senator Stetson, speaking for the Progressives, pointed out that the Wright-Stanton law provided for the election of those who will select the National delegates, a year before the Presidential election, and they had actually been elected under the terms of that law. This being the case, Stetson contended, Senator Wright's amendment was in the same class as legislation which was intended to affect pending litigation and would throw at once into uncertainty matters pertaining to the California National Convention delegation.

But it remained for Senator Campbell to point out the real danger of the Wright amendment.

The Legislature, Campbell pointed out, was about to adjourn. If Senator Wright succeeded in amending the bill, the measure would be sent to the printer for re-printing, which would take time. Not until the return of the re-printed bill could the Senate pass upon it. The measure would then be returned to the Assembly for concurrence in the Senate amendments. Whether there would be time for this before adjournment was a question, even though the Assembly promptly concurred. But if the Assembly failed to concur, the bill would be

as good as dead for there was no time for extended wrangle in conference committees over the measure. If the passage of the bill were prevented, the unsatisfactory provision of the Wright-Stanton Direct Primary law would continue in effect for another two years.

But five Senators [109] voted for the Wright amendment. Two of the five, Wright and Wolfe, had served on the Free Conference Committee which, two years before, had the final word in deciding the provisions which the Wright-Stanton Direct Primary law should contain.

The measure as it had come from the Assembly was then passed, not an adverse vote being recorded against it.

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109 The vote on the Wright amendment was as follows:

For the Amendment—Cassidy, Curtin, Hurd, Wolfe and Wright —5.

Against the Amendment—Beban, Bell, Birdsall, Black, Boynton, Bryant, Caminetti, Campbell, Cartwright, Cutten, Gates, Hare, Holohan, Juilliard, Larkins, Lewis, Martinelli, Regan, Roseberry, Rush, Sanford, Shanahan, Stetson, Thompson, Tyrrell and Walker —26.

CHAPTER VI.

RESTORATION OF THE AUSTRALIAN BALLOT.

Both the "Party Circle" and the "Party Column" Which Had Given the Organized Machine Exceptional Advantage at Elections Over the Unorganized Citizenry were Abolished Without a Dissenting Vote in Either Senate or Assembly.

The corruption of the Australian ballot was one of the most characteristic acts of the Southern Pacific machine; the restoration of the Australian ballot at the 1911 session of the Legislature, one of the most characteristic accomplishments of the Progressive movement.[110]

The adoption of the Australian ballot in California was forced upon the old Southern Pacific organization during the early nineties, after the ineffectiveness of the old-time ballot had been demonstrated at many elections. Hon. James G. Maguire,[110a] then Congressman from a

110 Regarding the restoration of the Australian ballot, Governor Johnson said in his inaugural address:

"All of the parties in the State of California are committed to the policy of restoring the Australian ballot to its original form, and, therefore, I merely call to your attention that restoration is one of the duties that devolves upon us because of party pledges."

110a Judge Maguire may be called the father of the Australian ballot in California, for he brought the idea here. Maguire's attention was called to the Australian election plan when on a visit to New York in 1889, by Allen Thorndyke Rice, at that time publisher of the North American Review. Rice was an enthusiastic advocate of the reform, and was supporting it in his Review. He supplied Maguire, who had already given the subject some attention, with literature on the subject.

On Maguire's return to San Francisco, he delivered a lecture on the Australian ballot at the old Metropolitan Temple. The Fed-

San Francisco district and at the time a power in California politics, was one of the leaders of the reform-of-the-election-laws movement; as were Franklin K. Lane, now Interstate Commerce Commissioner, James H. Barry of the San Francisco Star, and the late Arthur McEwen, the most independent newspaper writer who ever combated the "Associated Villainies," as McEwen dubbed the affiliated corporations whose political agents constituted the leaders of the California machine organization.

The original draft of the first Australian ballot measure to become a law in California, was taken to Sacramento in the early nineties by a committee of 100 citizens with Maguire at their head.

The proposed measure was without "party circle," or "party column," or other device to give the organized machine advantage over the unorganized citizenry. The names of the candidates for the several offices, were, under the terms of the bill, grouped under the name of the office to which they aspired, the name of the party to which each candidate owed his nomination following the candidate's name. The voter was thus called upon to choose between candidates, as well as to choose between parties.

But before the measure could become a law, it was amended by adding at the top of each ballot, a circle for

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erated Trades Council of San Francisco became interested, and at request of its representatives, Maguire drew the first Australian ballot measure ever prepared in California. During the 1890 campaign candidates for the Legislature were pledged to support such a measure. The passage of California's first Australian ballot law, largely through the effort of the Federated Trades Council, followed.

It is interesting to note in this particular that the California State Federation of Labor included restoration of the Australian ballot and simplification of the Direct Primary law, among "Labor measures," and instructed the representatives of Labor at Sacramento to support the passage of bills advocating these reforms.

each party that had named candidates. Each circle was marked with the name of a party. A cross stamped in one of these circles was equivalent to a vote for every candidate on the ticket who had a nomination from the party which the stamped circle represented.

The "party-circle," as the device was called, gave the party candidate advantage over the candidate running as an independent without party nomination, and tended to encourage the indifferent or lazy voter to choose between parties rather than between men. Nevertheless, comparative little use was made of the "party circle" until the further corruption of the ballot by the introduction of the "party column."

Under the "party-column" amendment to the original law, the names of candidates, instead of being grouped under the name of the office to which they aspired, were grouped under the name of the party to which they owed nomination. The average voter, wishing to vote for the head of his party ticket, under the new arrangement, found it convenient to follow down the column in voting for candidates for other offices, rather than to go over into the columns of other parties to hunt for candidates who, for minor offices, the voter might deem better qualified than the candidates of his own party. The "party circle" was, too, given a prominence which it had not had on the ballot provided in the original law.

Still another step—and a most important one—was taken to direct the voter to the "party circle." Under the law, a "distinguishing mark" invalidated the ballot. Under court rulings on this point, the most trivial mark

became a distinguishing mark—a cross mis-stamped, a blot, a double mark, all were held to be "distinguishing marks" which invalidated the ballot.[111]

Soon the idea that to be sure of one's vote it was safer to use the "party circle," than to run the risk of invalidating one's ballot by voting for individual candidates, became popular. And, finally, when the voting machine was introduced, a curious rivalry was encouraged to establish records for quick voting. The voter, wishing to make a "record," would rush into the booth, press down the party lever, and rush out again—having voted.

Under these conditions, which had developed during the slow course of tinkering with the Australian ballot law, the machine, in control of nominating conventions, had only to name a popular man at the head of the ticket, and it could be practically sure of electing to the minor offices candidates who would not have been the personal choice of the electors.[112]

This was particularly true of candidates for the judi-

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111 Curiously enough the most effective and most readily used "distinguishing mark" was permitted under the law. The theory of the objection to the "distinguishing mark" was to prevent the marking of a ballot so as to furnish proof to a second person that the elector had cast his ballot in a given way. But the law provided that the voter could write in the name of any person for any office he chose. Thus A, wising to show B that he had voted in a given way, need only to state in advance to B that he would write in the name of Richard Roe for constable. B would not only be furnished with a mark that would convince him that A had voted as agreed, but the mark would be in A's own handwriting. This was permitted under the law, but a ballot, folded before the crosses stamped by the voter were dry, so as to leave the impression of a cross out of place, would have been thrown out on the ground that it contained a distinguishing mark.

112 This was well illustrated at the Presidential election of 1904. So popular was Roosevelt in California, that the Republican Presidential electors received no less than 205,226 votes as against 89,294 for the Democratic electors. The People were for Roosevelt, because of the so-called "Roosevelt policies." The

ciary. The general public, after the excitement of a political campaign had passed, too often discovered, with regret, that a Judge who had served on the bench with ability and distinction, and whom all supposed would be re-elected as a matter of course, had been retired, because of his affiliation with the minority party.

Although attempts were made from time to time to restore the Australian ballot to its original simplicity and effectiveness, it was not until the legislative session of 1909 that the movement for ballot reform made much headway. At the 1909 session, however, three ballot reform measures were considered.

The first of these was introduced by Assemblyman C. C. Young of Berkeley and provided for the abolition of both the "party circle" and the "party column." The second was introduced by Senator Holohan, and did away with the "party circle" only.[118]

The third bill had been prepared by Mr. William Denman of San Francisco. This measure provided that

machine saw what was coming, and the Republican candidates for Congress in this State that year were in the main men who did not hold the Roosevelt theories of government at all. The same was true of the Republican candidates for the Legislature. The Legislature elected on the Roosevelt ticket was one of the most subservient and corrupt that ever sat in California. This Legislature elected to the United States Senate a representative "organization" politician, a man quite out of sympathy with the Roosevelt view of things. Thus, under the "party circle" scheme of voting, the popularity of the Roosevelt policies which gave Roosevelt his large California vote, at the same time carried the election of representatives in Congress who were well calculated to act as a block in the way of realization of those policies. Roosevelt and a square deal, was the rallying cry in California that year. Roosevelt carried the State, and at the same time pulled into office legislators who were for anything but square deal policies.

118 "The proposition for the abolition of the party circle," said Phil A. Stanton in his pamphlet, "A Personal Statement to the Voters of California," "was strictly a Democratic measure." Mr. Stanton was at the time a candidate for the Republican nomination for Governor. Out of over 200,000 votes cast at the Republican primaries, Mr. Stanton received 18,226.

candidates for judicial office should have their names printed in a separate column on the election ballot, and without party designation.[114] This measure was introduced in the Upper House by Senator Boynton.

Both the Holohan bill and the Boynton bill passed the Senate. After the passage of the Holohan bill in the Upper House, the Young bill was not pressed in the Assembly, on the theory that half a loaf is better than no bread, and that it was better to compromise to secure the certain abolishment of the "party circle," than to risk getting nothing by insisting upon abolishing the "party column."

The machine, as soon as the Young bill was out of the way, turned upon the Holohan bill in the Assembly and by a vote of 36 to 35 denied the measure's second reading.

On similar narrow margin the Boynton non-Partisan Judiciary bill met with defeat in the Assembly, 35 members voting for the measure and 29 against, 41 votes being required for its passage in the Lower House.

Thus, the 1909 Legislature, after action in the Senate, did nothing toward the restoration of the Australian

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114 "I voted against the non-partisan judicial column bill," said Phil A. Stanton, Speaker of the 1909 Assembly, "because the measure proposed was of a mongrel nature, misleading and utterly inadequate for the purpose sought to be accomplished."

It is interesting to note, however, that in spite of Mr. Stanton's adverse comment, the 1909 Judicial Column bill was endorsed by the San Francisco Bar Association; by Judge Gilbert, presiding Judge of the United States Circuit Court of Appeals; by United States Circuit Judge William H. Morrow; by United States District Judge De Haven; by Chief Justice Beatty of the California Supreme Court, and by more than sixty other judicial officers of California. The measure also had the commendation and endorsement of the Chief Justices of Pennsylvania, Massachusetts, Minnesota, Rhode Island, Illinois, Oregon, Wyoming, Mississippi, Arizona, Nevada and Montana, to whom it had been submitted before it was introduced in the California Legislature.

ballot to its original simplicity and effectiveness, or to take the judiciary out of politics.

The Democratic party in its platform adopted the following year declared for a non-partisan judiciary and for the removal of the party circle from the ballot.

The Republican party platform went further and was more specific. It declared for "the restoration of the true Australian ballot as originally adopted in California, without 'party circle' or 'party column,' and for placing of the names of judicial candidates on the election ballot without party designation."

The work of drawing a bill along the lines pledged in the Republican platform and partially pledged in the Democratic, fell largely to Assemblyman C. C. Young of Berkeley, who had introduced the Young bill at the 1909 session, and to Senator A. E. Boynton of Butte, who had introduced the Judicial Column bill at that session.

The bill prepared by these gentlemen abolished the "party circle" and the "party column" as had been attempted in the Young bill two years before. This left the names of candidates to be grouped on the election ballot under the name of the office to which they aspired, as had been provided by the original Australian ballot law introduced in the Legislature at the behest of Judge Maguire and his associates nearly a quarter of a century before.

The Young-Boynton measure also provided that the names of candidates for judicial office shall appear on the ballot without party designation, which was essentially the feature of the Boynton bill of 1909. The measure further provided for a place on the ballot for the names

of the nominees of the several parties for the United States Senate, that the provisions of the Oregon plan for nominating United States Senators might be carried out.

Not a vote was cast against the measure in either House. The restoration of the Australian ballot, and the lifting of the judiciary out of politics, which even at the 1909 session the machine had successfully resisted, was thus accomplished without opposition, both parties rallying to the support of the reform.

CHAPTER VII.

THE INITIATIVE AND REFERENDUM AMENDMENT.

Endorsed in the Democratic and Republican Platforms, and Strongly Urged by Governor Johnson in His Inaugural Address, the Amendment Was Adopted by a Total Vote in the Two Houses of 106 to 1.

Governor Johnson in his inaugural address pointed out that after California's government shall be composed of only those who represent one sovereign and master, The People, The People can best be armed to protect themselves hereafter, by the taking unto themselves the powers contained in the "Initiative," the "Referendum" and the "Recall." [115]

In this Governor Johnson was thoroughly in accord

[115] "When, with your assistance," said Governor Johnson, "California's government shall be composed only of those who recognize one sovereign and master, The People, then is presented to us the question of, How best can we arm The People to protect themselves hereafter? If we can give to The People the means by which they may accomplish such other reforms as they desire, the means as well by which they may prevent the misuse of the power temporarily centralized in the Legislature and an admonitory and precautionary measure which will ever be present before weak officials, and the existence of which will prevent the necessity for its use, then all that lies in our power will have been done in the direction of safeguarding the future and for the perpetuation of the theory upon which we ourselves shall conduct this government. This means for accomplishing other reforms has been designated the 'Initiative and the Referendum,' and the precautionary measure by which a recalcitrant official can be removed is designated the 'Recall.' And while I do not by any means believe the Initiative, the Referendum, and the Recall are the panacea for all our political ills, yet they do give to the electorate the power of action when desired, and they do place in the hands of The People the means by which they may protect themselves. I recommend to you, therefore, and I most strongly urge, that the first step in our design to preserve and perpetuate popular government shall be the adoption of the Initiative, the Referendum, and the Recall."

with the platforms of both the Democratic and the Republican parties.[116] But The People of California had learned from experience that in a reform so important as the "Initiative," party platforms do not necessarily bind those who have been elected through party nominations.[117] And, too, the opposition of the Republican organization, as well as of Democratic Senators at the session of 1909 had not been forgotten.[118]

At the 1909 session, the Progressives had not had the confidence to ask for the Referendum. They had asked for the Initiative only, and then made a further compromise by increasing the percentage of signatures of voters necessary to get a law before The People from 8 to 12 per cent.

The machine then defeated the amendment in the Senate by a vote of 20 for it to 15 against, 27 votes being necessary to submit it to The People. In the Assembly

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116 The Democrats set forth in their State platform (1910), "We stand for the Initiative, Referendum and Recall."

The Republican platform recommended to the Legislature and the Governor "the submission to The People of Constitutional amendments, providing for direct legislation in the State and in the County and local governments, through the Initiative, Referendum and Recall."

117 At the Legislative session of 1909, for example, Senator Eddie Wolfe, who had had Labor Union party nomination, and who owed his election in no small degree to votes of union labor men, led the fight in the Senate against the Initiative. Senator Hartman, another Union Labor Senator, voted against the amendment. Senator Finn, also with a Union Labor nomination, was not on hand to vote when the 1909 amendment was considered. The Democrats through their party platform had declared for the Initiative, but when the measure came to a vote in the Senate, two prominent Democratic Senators, Miller and Curtin, voted against it. Curtin called the Initiative a "gold brick." Miller announced that his conscience would not permit him to vote for such a measure.

118 When the Initiative was before the Senate in 1909, Senator Willis of San Bernardino denounced it as revolutionary and un-American. "After this," cried Willis, "will come the Referendum and the Recall, and then God knows what."

the measure failed to get beyond the committee to which it had been referred.

So, somewhat discouraged, promoters of the direct legislation principle, seriously thought at one time of asking for an amendment providing for the initiation of amendments to the Constitution only. But with the election of Johnson, and the general defeat at the elections of those members of former Legislatures who had opposed the Initiative, all thought of compromise was forgotten, and a stand was taken not only for the "Initiative" and the "Referendum," but for the "Recall" also.

Following out the provisions of the Republican State platform, Chairman Meyer Lissner appointed a committee with Senator Lee Gates as chairman, to draft an Initiative and Referendum amendment, and a Recall amendment, to be submitted to the consideration of the Legislature. The Initiative and Referendum amendment adopted at the 1911 session was the direct result of the work of this committee, although the measure was modified in many respects after the Legislature convened, and before the measure was introduced in either House. The changes were made, in the main, at the suggestion of Senator Lee Gates of Los Angeles, Assemblyman William C. Clark of Alameda, and Mr. Milton T. U'Ren, secretary of the Direct Legislation League of California.[119]

The Initiative and Referendum amendment consid-

119 The amendment as finally adopted reserves Initiative and Referendum powers to The People and provides the necessary machinery for using these powers so that the ratification of the amendment by The People will render the measure self-executing without the necessity of further action by the Legislature.

The measure provides that either a statutory law or an amendment to the Constitution shall be presented to The People for their adoption or rejection by a petition signed by qualified elec-

ered at the 1911 session was introduced in the Lower House by Assemblyman William C. Clark of Oakland, and in the upper by Senator Lee Gates of Los Angeles. The measure was not ready for introduction, however, until January 20.

The old-time machine element appears to have recognized that both Houses were prepared to adopt the amendment. At any rate, no open campaign was carried on against it, and little or no adverse lobbying.

But, acting on the theory that a measure cannot be adopted until voted upon, the machine element was quite willing to let action on the amendment be deferred from

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tors equal in number to 8 per cent. of all the votes cast for all candidates for Governor at the last preceding general election.

The measure further provides that a petition signed by 5 per cent. of the qualified electors, reckoned as before, and presented to the Secretary of State at least ten days before the commencement of a regular session of the Legislature, and proposing a statutory law, as set forth in the petition, shall require the proposed law to be transmitted to the Legislature. If said proposed law is refused passage by the Legislature, or if no action is taken upon it within forty days from its receipt, then the proposed law shall be submitted to The People at the next ensuing general election. If such law be not passed by the Legislature that Legislature may propose a different measure on the same subject, both of which measures shall be presented to The People to be voted on at the same election.

The Referendum right is made applicable to all acts of the Legislature within ninety days after final adjournment, except as to acts calling elections and those providing for tax levies and usual expenses of the State, and urgency measures necessary for the immediate preservation of the public peace, health, or safety, which latter must be passed by a two-thirds vote of all the members elected to each house. Further, a statement of the facts constituting such necessity shall be set forth in one section of the act, and this section shall be passed only upon a separate yea and nay vote, thus showing at once to The People what facts the Legislature considered as constituting an urgency.

Further, it is provided that no act granting any franchise or special privilege, or creating a vested right or interest shall be construed an urgency measure. To submit a measure to a Referendary vote requires a 5 per cent. petition, reckoned in the same way as for the Initiative. No Initiative measure is subject to the Governor's veto, nor, if once adopted, can it be amended or repealed unless the measure itself so provides, without the action of The People. In the case of conflict between measures approved by the electors at the same election, that receiving the highest affirmative vote shall prevail.

time to time, in anticipation, no doubt, of some unforeseen event which might result in failure of any action on the measure. Once adopted, the amendment would be submitted to The People. But until adopted there was the chance that it might not be given favorable consideration at all.

The Senate acted on the amendment before the Assembly.

When on February 8, the measure finally came before the Upper House for adoption, after having been amended in committee and on the floor of the Senate, several Senators demanded further amendment, which meant more delay.

Strangely enough, the most persistent opponent of immediate action was Senator Caminetti, who has all his life been an earnest advocate of the principle of both the Initiative and of the Referendum.

Senator Leroy A. Wright of San Diego, the only member of either house who, on final vote, went on record against the amendment, joined with Caminetti in demanding that the measure be amended. So quickly were the objections to the measure made, and so well were they advocated, that the whole Senate became involved in a debate which lasted three hours.

Senator Boynton finally brought the Senate to realization of the folly of the dispute by pointing out that the amendment had been given thorough consideration by the Judiciary Committee, had already been considered and amended by the Senate, and had been on the Senate files for several days. The time had come, Boynton insisted, for final action. The majority of the Senate was clearly in accord with him. But when Boynton had con-

cluded, Senator Gates, who had charge of the measure, to the astonishment of the Progressives, announced that he was willing that consideration of the amendment should go over until another day.[120]

Senator Wright had won a point. The legislative day of February 8 closed without the Senate having adopted the Initiative and Referendum amendment. Had the Senate been more evenly divided between Reactionaries and Progressives, this delay might have resulted in the defeat of the measure.

When the measure came up the following day, Caminetti presented his amendments. They were two in number.

The Initiative measure provided that the petition to initiate a law shall be signed "by qualified electors, equal in number to eight per cent. of all votes cast for all candidates for Governor at the last preceding general election." Caminetti's first amendment made this provision read "by *at least one per centum of* the qualified electors, equal in number to eight per cent., etc." The words in italics show the addition which Caminetti wished to make to the measure. Had the Caminetti amendment been adopted, the Senate could not have acted upon the measure until it had been re-printed. This would have necessitated further delay.

Caminetti's proposed amendment was defeated by a vote of 8 to 24.[121]

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120 Senator Gates admitted later in the day that in yielding to those who were clamoring for delay he had made a mistake.

121 The vote on Caminetti's first amendment was:

For Caminetti's amendment—Senators Beban, Caminetti, Estudillo, Hare, Juilliard, Martinelli, Sanford and Wright—8.

Against Caminetti's amendment—Senators Avey, Bell, Bills, Birdsall, Black, Boynton, Bryant, Burnett, Cassidy, Cutten, Gates,

But this did not deter Caminetti from offering a second amendment. The second amendment provided that an Initiative petition must be signed in at least ten counties of the State.

Caminetti in speaking to the question of his amendment insisted that centers of population should not be given monopoly in initiating legislation, which he stated was possible under the Clark-Gates measure.

Senator Gates replied that in his opinion if 32,000 voters of San Francisco, for example, or of any other center of population, believed their rights had been intruded upon, they should be permitted to ask for redress of their grievances, regardless of the fact that they lived in one section of the State.

Senator Boynton suggested that if there was sufficient sentiment in one section to seek to use the powers of the Initiative and Referendum, it would be no hard task to secure sufficient backing of the other counties. So that even if the Caminetti amendments were adopted, no more restrictions would be imposed upon the majority, in favor of the minority, than under the original draft of the measure.

Caminetti's second proposed change was voted down as had been the first.[122]

Hans, Hewitt, Larkins, Lewis, Regan, Roseberry, Rush, Shanahan, Stetson, Thompson, Tyrrell, Walker and Welch—24.

The ayes and noes on Caminetti's second amendment were not demanded and no record was made of the vote.

122 Senator Caminetti had the following explanation of his attitude on the Initiative and Referendum amendment printed in the Senate Journal:

"While in favor of the principles underlying Senate Constitutional Amendment No. 22, I believe that the power to put into motion the authority reserved to The People therein should not be placed in the power entirely of large populous cities or counties containing in their respective confine population sufficient to se-

The amendment was then adopted by a vote of 35 to 1.[123]

When the Initiative amendment came up for adoption in the Assembly, Assemblyman Polsley offered amendments increasing the percentage of signers of petitions to initiate laws from 8 to 15 per cent., and the percentage of signers to refer a law to the referendum of The People from 5 to 10 per cent. The effect of the adoption of these amendments would have been to render it difficult if not impossible to invoke either the Initiative or the Referendum. The fight for the changes proposed by Mr. Polsley lacked spirit, however, and his proposed

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cure the required percentage of signers to petitions that may be filed under its provisions. The fathers jealously guarded against centralization of power of The People as well as of the State, in providing against the possibility of populous States controlling the elections for President and the deliberations of the Senate of the United States. When it is remembered that this authority extends to amendments of our Constitution, as well as to our laws, and that in reference to the latter the veto is inhibited, we should pause before giving large cities and counties this extensive power. It is no answer that in the present state of public opinion there is no danger to the general welfare. We should provide, in all proposals to amend the Constitution and in laws, for all contingencies and guard the probabilities that sometimes may become possibilities, and thus cause detriment of The People.

"We follow the rule set forth in my amendments in nominating petitions for Governor and other State officers, and in like manner, but with reduced percentages for other State officers—the reason for the rule in those cases being the same that supports my contention, viz: to prevent large communities controlling and dictating such nominations.

"While I would have preferred to see my amendments adopted as a matter of precaution, I could not record my vote against principles for the adoption of which I have labored for years.

"This contention applies with greater force to the companion measure providing for the Recall—particularly in its application to the judiciary."

123 The Senate vote on the Initiative and Referendum amendment was:

For the Initiative and Referendum—Avey, Beban, Bell, Bills, Birdsall, Black, Boynton, Bryant, Burnett, Caminetti, Campbell, Cassidy, Cutten, Estudillo, Finn, Gates, Hans, Hare, Hewitt, Holohan, Hurd, Juilliard, Larkins, Lewis, Martinelli, Regan, Roseberry, Rush, Sanford, Shanahan, Stetson, Thompson, Tyrrell, Walker and Welch—35.

Against the Initiative and Referendum—Wright—1.

amendments were defeated almost overwhelmingly. The Initiative and Referendum measure was then adopted by a vote of 71 to 0.

In the two Houses, out of 120 members 106 had voted for the Initiative Amendment, and only one against it.

CHAPTER VIII.

THE RECALL OF THE JUDICIARY.[124]

Prominent Progressives Took Definite Stand Against Making Judicial Officers Subject to the Recall—Effect of the Debates on the Subject and of the Criticism of Decisions in the San Francisco Graft Cases Was to Strengthen the Position of Those Who Held That no Exception Should Be Made.

The Republican and Democratic 1910 platforms, declared for the "Initiative, Referendum and Recall." There was no reservation made in the declaration of either party. But it developed at the test that either the Recall paragraphs of the two platforms were not carefully read, or some who read them did not grasp their meaning.

No sooner had the administration taken up Recall legislation, than strong opposition to the Recall of the Judiciary developed in the ranks of the Progressives

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124 The direct legislation measures discussed in this and the two chapters to follow include only those which were submitted in the form of Constitutional amendments which were adopted, or bills which became laws.

During the session a large number of proposed amendments and bills providing for Initiative, Referendum and Recall under various plans were introduced in both houses. Among these were A. C. A. No. 3, Held, relating to the legislative power of The People; A. C. A. No. 4, Held, relating to the recall of officers; A. C. A. No. 7, Beatty, relating to the election, terms and recall of judicial officers; A. C. A. No. 8, Griffin, relating to the legislative powers of The People; A. C. A. No. 10, Griffin, relating to the right of The People to recall public officials and A. C. A. No. 19, Beatty, relating to the legislative department of the State.

themselves.[125] Progressives of the type of William Denman, Charles S. Wheeler and Curtis Lindley, held that to provide for the Recall of the Judiciary would be a blow at the very foundations of our government.

On the other hand, a second group of Progressives, numbering men quite as conservative as the first group,[126] took the ground taken by Governor Johnson in his inaugural address, that the Recall should be made to apply to every official, the judicial as well as the executive and legislative.

So marked was the division of the Progressives on this question, that the Committee on Direct Legislation appointed by the Republican State Central Committee to frame constitutional amendments to cover the Initiative, Referendum and Recall did not include the recall of the

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125 Charles S. Wheeler, in the Heney-Wheeler debate, before the Senate and Assembly Judiciary Committees, Feb. 3, 1911, in speaking against the Recall of the Judiciary said:

"I purpose to have you understand at the outset where I stand on this question. I consider myself a Progressive Republican. I stood on this Republican platform as I understood it. I understood that this Republican platform provided for the Recall, but I did not understand that this Republican platform bound the party for which I stood in this campaign to strike at the very foundations of the government in which I live and which I have lifted my hand to Heaven and have given my oath to support."

126 "I believe," said Judge J. V. Coffey, for more than a generation a member of the Superior Bench for San Francisco County, "in the universal application of the Recall. If The People are competent to elect in the first instance, they certainly should be competent to re-elect or recall, really equivalent terms."

"It must be admitted," said Judge W. B. Nutter of the San Joaquin County Superior Bench, "that he (the judicial officer) of all officers, is the most important. By his judgment the property rights and personal liberties of all who come before him are determined. If he faithfully performs his duties as the law requires that he should, he need have no fear that The People who have chosen him by their ballots will recall him from the position to which he has been elected, and if he fails to perform such duties, then no other officer, in my judgment, should be more quickly recalled."

judiciary in the original draft of the Recall measure which they prepared.[126a]

At the informal meeting of citizens and members of the Legislature at the Palace Hotel in San Francisco, a few days before the Legislature convened, to hear the reports of the several committees that had been appointed by the Republican State Central Committee, the committee on Direct Legislation offered a Recall amendment which included all elected public officials. Nevertheless, the division among those present on this issue was marked, Mr. William Denman in particular taking a stand against including the judiciary in the provisions of the measure.

This marked division among the Progressives offered the Reactionaries wide opening, of which they were quick to take advantage.

The old machine element was opposed to the Recall principle; with the machine in the saddle, no Recall amendment, with or without the Judiciary excluded, would have been submitted to the electors.

When the Legislature convened, the situation at Sacramento on this issue was as follows: All the Reactionaries were opposed to the Recall; all the Progressives desired the adoption of a Recall amendment; a majority of the Progressives insisted that the Recall be made to apply to all elected officials including judges; a minority of the Progressives insisted that the Judiciary be excluded from the Recall provisions.

With the fine tact of the professional politician, the

126a The amendment as originally prepared by the committee included the recall of all elected officials, with the exception of judges of courts of record.

Reactionaries carefully refrained from entering into the dispute between the Progressive factions. The appearance of an old-time machine leader or lobbyist of the type of Jere Burke, or Johnnie Mackenzie, or George Hatton, at Sacramento against the Recall amendment during the 1911 session, would have gained votes for the amendment. The Reactionaries, in resisting the amendment, found more effective allies among the Progressives than could possibly have been picked from their own ranks. So the Reactionaries permitted the open opposition to the Recall to come from Progressives, themselves standing ready to widen the breach whenever opportunity offered.[127]

Thus, when the Recall amendment was considered before the Senate and Assembly Judiciary Committees, the Reactionaries took no part, leaving a Progressive, Charles S. Wheeler, to present the arguments against the Recall of the Judiciary, which, in a different situation,

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127 The situation was not unlike that of two years before when the 1909 Direct Primary bill was under consideration. All the Progressives, in 1909, wanted a Direct Primary law passed, but when it came to the logical application of the direct primary principle the Progressives divided, as they divided in 1911 over the application of the Recall.

The majority of them wanted the direct primary principle applied to the election of United States Senators, giving The People a State-wide, practical, pledge-backed vote, as in Oregon. The more conservative opposed this—just as they, at the 1911 session, opposed the Recall of the Judiciary—and insisted that the vote for United States Senators be kept within party lines.

The machine Senators were quick to take advantage of this division and finally succeeded in preventing the adoption of every practical plan offered to secure a popular expression of choice for United States Senator.

Nevertheless, the adoption of a practical plan for choosing United States Senators was only delayed. The 1911 Legislature adopted the Oregon plan, which conservative Progressives stupidly assisted crafty Reactionaries in defeating in 1909.

Just as the machine element employed the division of their opponents in 1909 to prevent good legislation, they employed the division over the application of the principle of the Recall in 1911, but not so successfully.

would have been offered by a Jere Burke or a George Hatton.

Francis J. Heney and Matt I. Sullivan opposed Mr. Wheeler, urging that no distinction be made, and that the Recall apply to all officials, including the Judiciary. The principal debate was between Heney and Wheeler. It brought out sharply the line of division between the opposing groups of Progressives.

The two men were agreed—until the question of the Recall of the Judiciary was reached—upon every principle for which the Progressives stand. Wheeler was no less positive than Heney in his acceptance of the Initiative and Referendum; he announced also his acceptance of the principle of the Recall of all elective officials except the Judiciary.

Wheeler went further. He admitted with Heney that the Judiciary has usurped legislative functions; that The People have a grievance, and a serious grievance,[128] against the bench; that decisions have been made, even by the Supreme Court of the United States, which warranted the removal of the judges making them.

Heney and Wheeler were as one up to this point.

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128 "Let us," said Wheeler, "go to our foundations, and let me tell you what the grievance is. It began fifteen years ago on the 26th day of last May, when the Supreme Court of the United States, in the Income Tax Decision, overruled the precedent of a hundred years—overruled the law and invalidated an income tax by virtue of which the War of the Rebellion had, in a large measure, been brought to a successful finish; overruled all prior conceptions of the relations between the Executive and Judicial departments of the Government, and rendered a decision that declared that the income tax was not a tax lexied upon the land, though levied upon the accumulative person, and upon his debits and credits—all income; on real and personal property; on stocks and bonds. Why, at that moment, not only was precedent departed from, but there was a feeling of insecurity and unrest in the nation; a feeling upon the part of the people that the courts could not be trusted, that the courts would usurp the functions of the legislative departments and appropriate them to themselves."

Indeed, Wheeler was even more scathing than Heney in denunciation of courts that usurp legislative functions. Such usurpation, both agreed, justifies the removal of the judge guilty of it.

But when it came to the method of removal, the two men differed hopelessly.

Heney urged that the power of removal be left with The People who elect; Wheeler that it be left with the Legislature.[129]

The Heney-Wheeler debate was the most notable hearing on the question, but the difference which that debate developed was the difference that divided the Progressives on the Recall amendment until the final vote was taken on the measure in the Senate on March 8, less than three weeks before the Legislature adjourned.[130]

Under the State Constitution two methods are pro-

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129 And yet, in his argument Wheeler admitted that when the acts of members of the bench have justified their impeachment, legislative bodies have not acted. Legislative bodies have not acted, Wheeler admitted, because the element that has profited by the vicious decision has controlled the Legislatures. "Why then," Wheeler demanded, "when that outcry took place in 1895 (the outcry against the decision of the Federal Supreme Court in the Income Tax case), after this opinion was rendered—why did not the legislative branch of our Government, in common self-respect, put down the usurpers, though they were justices of the Supreme Court of the United States? Why did they not assert the majesty of the legislative arm of the Government? You who understand political situations know why. You know why; you know that there was not a two-thirds majority of The People's representatives either in the Lower House or in the Upper House on that day; you know that no vote that would have struck at Big Business and property interests contrary to the decision of the Supreme Court of the United States, however unjustified by the Constitution it might be—you know that no vote would have been obtained to oust from their positions the judiciary of that day who had thus invaded the legislative arm of the Government. Now you have the reason why it was not used, and that is the only reason."

130 The Heney-Wheeler debate after all resolved itself into the question of how far The People are prepared to trust themselves. Johnson made this exceptionally clear in his inaugural address. "The opponents," he said, "of Direct Legislation and the Recall, however they may phrase their opposition, in reality be-

vided for the removal of a judge from office. The first method is by impeachment proceedings;[131] the second is by concurrent resolution adopted by a two-thirds vote of each House.[132]

The point which the Progressives who opposed the Recall of the Judiciary insisted upon was that corruption in a judge is not the only ground upon which he may be deprived of his office. Under impeachment proceedings any unfitness, even the unfitness of political associates, is, it was contended, sufficient ground for removal.[133]

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lieve The People cannot be trusted. On the other hand, those of us who espouse these measures do so because of our deep-rooted belief in popular government, and not only in the right of The People to govern, but in their ability to govern; and this leads us logically to the belief that if The People have the right, the ability, and the intelligence to elect, they have as well the right, ability, and intelligence to reject or to recall; and this applies with equal force to an administrative or a judicial officer."

131 Article IV, Sec. 18, Constitution of 1879.

132 Article VI, Sec. 10, State Constitution of 1879. This section provides that, "Justices of the Supreme Court, and of the District Courts of Appeal, and judges of the Superior Courts, may be removed by concurrent resolution of both houses of the Legislature adopted by a two-thirds vote of each house. All other judicial officers, except Justices of the Peace, may be removed by the Senate on the recommendation of the Governor; but no removal shall be made by virtue of this section unless the cause thereof be entered on the journal, nor unless the party complained of has been served with a copy of the complaint against him and shall have had an opportunity of being heard in his defense. On the question of removal the ayes and noes shall be entered on the journal."

133 "Any unfitness," said Wheeler in the Heney-Wheeler debate, "even if he be a Justice of the Supreme Court of the United States, any unfitness that may be alleged, if it be in his political associations, if after he has gone to the bench, forsaking their high-minded views of justice, he allies himself in the political machinery of any party, though he be a Justice of the Supreme Court of the United States, he may be impeached and removed for it. If his habits become such that his general conduct tends to cast doubt and disfavor upon the judicial office, dishonorable appearances, though he in fact be honorable, if his dishonorable appearances are such that they would cast doubt upon his integrity, then it is in the power of the Congress to remove him. Anything tending to degrade the judiciary is matter of charge, once established, the Assembly making the charge, and the Senate by a two-thirds vote passing it, the person is impeached and the Judge is removed."

But, it was insisted on the other hand, that removal by impeachment is impracticable, because of the length of the defense that could be made.[134]

Then, replied the opponents of the Recall of judges, you can resort to removal by concurrent resolution. According to the advocates of this plan a judge can, under existing constitutional provision, by concurrent resolution, be removed from office, even without cause, provided two-thirds of the members of each House will vote for such removal.[135]

Heney in his reply to this point in Wheeler's argument, referred to the fact that in years passed the Southern Pacific political machine had unquestionably controlled two-thirds of the members of each House of the

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134 "It would," said Senator Shanahan, who favored the recall of judges, "take months if not years to remove a judge under impeachment proceedings. That is why impeachment proceedings will not be instituted. Impeachment proceedings from the trial of Warren Hastings to the present time have proved unsatisfactory. They have failed. The defendant is entitled to be heard; entitled to make his defense, and such defense may extend his trial into years."

135 William H. Denman contended before the Senate Judiciary Committee (Feb. 15, 1911) that by concurrent resolution a judge may be removed on the ground that he is out of sympathy with our institutions, or that his attitude is "wrong." On his defense, Denman contended, the judge could deny the charges, but it would be for the Legislature to decide; for the Legislature to declare whether the judge was a fit person to occupy the bench.

Wheeler, in the Heney-Wheeler debate, was even more emphatic on this point. "Do you not know," he said, "that at this moment by a concurrent resolution of both your Houses, you may remove any judge? Only this, that you must serve a copy of the complaint on him, give him as short a shrift as you want—order him here to the Capitol if you want, and give him such defense as you see fit to let him have—not more than ten days, anyhow. Then if you will, without further consideration, pass upon whether or not he has abdicated his high functions, lost his honor, and take from him all that is left, the semblance of honor that a judicial position gives him; **and if he be innocent, even, your power is such that to-day you can remove him.** All that stands between him and your wrath is your high oath that you took as a member of the House or the Senate."

Legislature, who, under the constitutional provision quoted by Wheeler could remove a judge without cause.

"Just think of that," insisted Heney, facetiously. "Think how those judges must have wobbled in their seats."

Into the discussion of the practicability of removing an undesirable judge by impeachment proceedings or concurrent resolution, was injected, late in January, the order of the Supreme Court, granting a rehearing of the case of Abraham Ruef, convicted of bribing a San Francisco Supervisor in the interest of the United Railroads, the public service corporation that controls the San Francisco street-car system.

Ruef, after every technical defense within the ingenuity of the criminal lawyer had been made in his behalf, had been convicted and sentenced to fourteen years penal servitude at San Quentin.

The Superior Court denied Ruef's motion for a new trial. On appeal, the District Court of Appeal had affirmed this judgment. The judgment of the Court of Appeal became final at the expiration of December 23, 1910. But the Supreme Court was empowered under the State Constitution, to order the cause to be heard by the Supreme Court, provided the order were made within thirty days after the judgment of the District Court of Appeal became final—that is to say, thirty days after December 23, 1910, which made January 22, 1911, the last day on which the Supreme Court could grant a rehearing, provided such order were made. If the order were not made before January 23, Ruef's last technical defense would be gone, and he would be obliged to

enter San Quentin to begin his fourteen-year term. That the order might be issued, it required the signatures of four of the seven members of the Supreme Court.

January 22, 1911, fell on a Sunday. On Monday, January 23, word reached Sacramento that four of the Justices—including the Chief Justice—Beatty, Lorigan, Henshaw and Melvin had signed the necessary order. This was accepted as a step toward granting Ruef a new trial. Had a second trial been granted, it would at best have been years before Ruef could finally be imprisoned if he were ever imprisoned at all.[136]

The order was not well received at Sacramento. The scandals of the San Francisco graft prosecution were recalled, as was the character of the criticisms [137] of the

136 Said the Sacramento Bee in an editorial article discussing this order, the day after it was made public, January 24, 1911:

"It cannot be denied that this order, by a bare majority of the Supreme Court and—with the single exception of the Chief Justice, by the three of its members least esteemed and respected by the public—has excited disgust and exasperation throughout California. There is a strong popular feeling and belief that the Supreme Court should not thus have interposed to save from punishment the most notorious scoundrel and corruptionist in California, a man known to everybody as having enriched himself by systematic grafting and by the bribery of public servants in the interests of corporations, a man with many indictments resting against him but convicted only on one.

"What adds to this general disgust and indignation over the Supreme Court's order is apprehension that the rehearing before that tribunal may result in the grant of a new trial for Ruef, a reversal which in all probability would be equivalent to a final discharge. Such changes have taken place in San Francisco in the last two years, especially in the office of the District Attorney, that a new trial would have small chance of ending in conviction.

"No reasons are given by the Supreme Court for its order for a rehearing, but presumably they are of a purely technical sort, for the fact of Ruef's guilt was abundantly proved on the trial."

137 Dean John H. Wigmore of the Northwestern University School of Law, author of the standard work on evidence which bears his name, concluded a review of the decision in the Schmitz case, and controversy which followed that decision, as follows:

"The truth is that the learned Chief Justice (of California) in endeavoring to support his decision, weaves a logical web, and then entangles himself in it.

"Such disputation were the life of scholarship and of the law six hundred years ago. They are out of place to-day. There are

higher court decisions in the graft cases where convictions had been set aside.

And then came the astounding rumor that one Justice at least had signed the order for a rehearing without considering the briefs which had been filed in the case.

The story was that Justice Henshaw had left California for an Eastern State on January 11, and had continued absent from the State; that *the Attorney-General's reply to Ruef's petition for a rehearing had not been filed until the day following, January 12.*

This story was not at first taken seriously.[188] Later on, it was confirmed.

The facts later brought out, involved the following dates:[189]

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enough rules of law to sustain them, if the court wants to do so. And there are enough rules of law to brush them away, if the court wants to do that.

"All the rules in the world will not get us substantial justice if the judges have not the correct living moral attitude toward substantial justice.

"We do not doubt that there are dozens of other Supreme Justices who would decide, and are to-day deciding, in obscure cases, just such points in just the same way as the California case. And we do not doubt that there are hundreds of lawyers whose professional habit of mind would make them decide just that way if they were elevated to the bench to-morrow in place of those other anachronistic jurists who are now there. The moral is that our profession must be educated out of such vicious habits of thought. One way to do this is to let the newer ideas be dinned into their professional consciousness by public criticism and private conversation.

"The Schmitz-Ruef case will at least have been an ill-wind blowing good to somebody if it helps to achieve that result."

188 As late as February 15, the story was given little credence at Sacramento. On that date, William Denman, speaking before the Senate Judiciary Committee, suggested that Justice Henshaw, prior to his departure from the State, had signed not only the order in the Ruef case, but five orders.

"Do five such orders exist?" demanded Senator Cutten.

Denman replied that the five orders had been shown him by a member of the court.

189 See the records in the Ruef case, particularly the order of the Supreme Court vacating its order granting Ruef a rehearing, filed February 28, 1911.

December 31, 1910—Ruef's petition for rehearing was filed in Supreme Court.

January 10—W. H. Metson was granted permission to file a brief in the case as *Amicus Curiae*.

January 10—Justice Henshaw signed the order granting Ruef a rehearing.

January 11—Justice Henshaw left the State and was absent until after the order granting Ruef a rehearing had been filed. Up to the date on which Henshaw signed the order, the record before the Court consisted of Ruef's petition, and the permission given Metson to file a brief.

January 12—Metson filed his brief as *Amicus Curiae*.

January 12—The Attorney-General filed his reply to Ruef's petition for a rehearing.

January 19—Justice Melvin signed the order granting Ruef's petition.

January 20—Attorney-General filed reply to Metson's brief.

January 21—Chief Justice Beatty, and Justices Shaw, Angellotti, Lorigan and Sloss, met in the chambers of the Chief Justice for consultation regarding Ruef's petition. Justice Lorigan signed the order granting the petition. Justices Shaw, Angellotti and Sloss declined to concur in such order, and Chief Justice Beatty reserved his decision in the matter until January 22, 1911.

January 22, 1911—(Sunday, the last day on which the order could be signed) Chief Justice Beatty signed the order, his being the fourth name on the document, four signatures being necessary to make it effective.

January 23—A typewritten copy of the order was

filed with the Clerk of the Court, the original being retained in the office of the Secretaries to the Justices.[140]

Attorney-General U. S. Webb attacked the order, demanding that the Supreme Court set the order aside.

This the Court finally did. The order granting Ruef a rehearing was judicially declared to be "ineffectual for any purpose and void." Ruef went to State Prison to serve his fourteen-year term.

But the Supreme Court did not set the order aside because Henshaw had signed the document before the argument of the prosecution had been heard. The order was set aside on the ground that Henshaw, being absent from the State when the signature of the fourth justice was attached thereto, was at the time unable to exercise any judicial function as a Justice of the Supreme Court. Without Henshaw's signature, the signatures of but three Justices appeared on the order. As the signatures of four of the Justices were required to make the order effective the Court declared its Ruef rehearing order to be worthless.

These events coming as the culmination of the San

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140 On this point, the Justices in their decision vacating their first order state, "the original order, in accordance with our uniform practice, being retained in the office of our secretaries."

In Rule 28, Rules of the Supreme Court, 1909, Calendar, appears the following provision: "All orders of the Supreme Court granting rehearings, or for hearing in Bank causes decided in departments, shall be signed by the members of the Court assenting thereto, and filed with the Clerk."

It may be said, however, that rehearings and hearings in bank are distinguished from hearings in the Supreme Court after decision in the District Court of Appeals, although the procedure is practically the same. It may be added that since the Ruef incident the rule has been complied with. I am reliably informed that the Clerk's records now contain the original order in every case since the establishment of the Appellate Courts.

Francisco graft trials, and all occurring while the Legislature was in session, created much adverse comment.

There was talk of impeachment proceedings. United States Senator John D. Works, who had declared himself to be opposed to the Recall of judges by The People,[142] wrote a letter to State Senator Leslie R. Hewitt,

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142 Senator Works made his position known in a letter to Mr. Charles S. Wheeler, which was given wide publicity. The letter was dated February 7, 1911, and was as follows:

"Charles S. Wheeler, Esq.,
"Attorney at Law,
"San Francisco, California.

"My Dear Mr. Wheeler:

"I am glad you had the courage and good judgment to oppose the application of the Recall to judges. The Progressive Republicans could hardly make a worse mistake. It is reform run mad. One can make allowances for attorneys who made the fight in the San Francisco graft cases. But a lawyer should be able to rise above the personal animosities born of such a conflict.

"The future of this country is greatly dependent upon a fearless and independent judiciary. Any conscientious man, who has served as judge, will tell you that he has been compelled by his oath and his sense of duty to render decisions that were unpopular with him, and if left free to exercise his own desires no such decisions would have been rendered. Indeed, the most difficult thing a judge has to do is to control his own feelings and decide cases according to law and not according to his own feelings of sympathy or the reverse.

"Such a judge will, of necessity, render decisions that are unpopular with the public, as well as himself, in the performance of his imperative duty. It will be just such unpopular decisions that will arouse public resentment and induce the recall of the judge who has the honesty and the courage to do his duty, often against his own feelings. The judge who will bow to his own feelings or to public clamor, often ill-founded, will never be recalled, while the judge who does his duty will fall a victim to the public indignation based on wholly false ideas of the duty of a judge.

"I am hoping that the Legislature will listen to reason before this wrong step is taken. They need some of the fortitude and courage of a good and fearless judge who would decide the law in the face of public protest whether in the form of a recall movement or in some other way.

"We will still have judges that will do their duty fearlessly in spite of the big stick in the form of the Recall. I hope we have courageous men enough in the Legislature to resist the public clamor that is pressing for this legislation that will make the weak judge weaker and encourage the dishonest judge to decide cases in such way as to secure public favor instead of deciding the law without fear, favor or affection. It will be a sorry day to this State when a law is passed that must, in the nature of things, degrade the judiciary and make it less honest, less fearless, less independent. No possible good can come of such legislation while much harm may, and almost certainly will, result if any such law is enacted and attempted to be enforced.

"Sincerely yours, "JOHN D. WORKS."

in which he inquired if the charges against Judge Henshaw were true, why impeachment proceedings had not been brought against Henshaw.[148]

Mr. William Denman, another opponent of the Recall of the Judiciary by The People, urged before the Senate Judiciary Committee that the Legislature owed it to the Supreme Court, as well as to itself and to the public, to make thorough investigation. Denman asked the committee if the Legislature would, on proper showing, declare the office of a Supreme Justice vacant.

Senator Shanahan was quick to reply that under such a showing the Legislature would certainly act.

"But," added Shanahan—and here he touched the weak point of impeachment proceedings—"it would take months if not years. That is why impeachment proceedings will not be instituted. Impeachment proceedings

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148 "If the charges," said Senator Works in his letter to Hewitt, "made against Judge Henshaw, for example, by the Attorney-General of this State, under oath, are true, why is it the Legislature of this State before this has not commenced impeachment proceedings against him?

"The Legislature has no right to shrink from this duty and responsibility and relieve itself from taking such a step by relegating that duty and responsibility to The People of the State by the enactment of recall legislation. If Judge Henshaw, or any other judge, has violated his duty to the State and betrayed his office as the charges made against him indicate, the duty of the Legislature is imperative, and that duty should be performed without hesitation and without delay."

Justice Henshaw, in discussing Judge Works' letter, in an interview in the San Francisco Examiner, February 15, 1911, is quoted as saying: "All the charges made by Attorney-General Webb in his affidavit attacking the Ruef rehearing order January 30th are true. The orders were signed in the manner stated and I told him so when he visited my office. There was nothing unusual about it. It was done in accordance with the usual practice of this court.

"We seldom meet in session to sign the orders. There may be twenty cases to be passed on in one week. Each Justice looks them over at his leisure and signs what orders he agrees to.

"I was out of the State, as Mr. Webb says, and at the time that he says. I did not even imagine that there was a legal point involved. The practice never has been questioned before."

from the trial of Warren Hastings to the present time have proved unsatisfactory."

As early as February 1, eight days after the order for a rehearing of the Ruef case had been made, Senator George W. Cartwright of Fresno introduced a resolution [144] requesting the Assembly—where impeachment proceedings must originate—to take such steps as might be necessary for the investigation of the Supreme Court's conduct.

In introducing his resolution Cartwright took occasion to say that it was intended as no reflection upon the members of the Supreme Court. The Senator insisted that the resolution was introduced for the protection of the court.

"If," said Cartwright, "the criticism of the court is based on facts, the members involved should be im-

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144 The Cartwright resolution was in full as follows:

"Whereas, The Supreme Court of this State on or about the 23rd of January, 1911, rendered a decision in the case of the People of the State of California vs. Abraham Ruef, in which the defendant is granted a rehearing; and

"Whereas, Various newspapers have published criticisms condemning said decision, and intimating that the Justices participating therein were controlled by corrupt and unworthy motives; and

"Whereas, The integrity of our courts has been frequently assailed by public speakers and by many of our citizens, all of which tends to destroy the confidence of The People in the purity and integrity of our courts of justice; be it

"Resolved by the Senate, That the Assembly be requested to appoint a committee of the Assembly, such committee to be authorized, empowered, and instructed to investigate the whole subject matter and particularly to investigate said decision, the grounds upon which the decision is based and the conduct of the Justices of the Supreme Court in relation to said decision, and that the committee report to the Assembly the results of such investigation, with such recommendations as to the committee may seem meet and proper in the premises; be it further

"Resolved, That said committee shall have power to summon witnesses, and to send for persons and papers and to issue subpoenaes and compel attendance of witnesses when necessary."

peached. If the criticism is unfounded, the Court should be vindicated."

Two weeks after the Cartwright resolution had been introduced, six members of the Supreme Court joined in a communication to the Legislature requesting that, "by appropriate committee or committees" the Legislature investigate not only the granting of the Ruef order, but any further matter touching upon the Court's conduct.[145]

In the Assembly, the Supreme Court's letter was re-

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[145] The Supreme Court's letter to the Legislature read as follows:

"San Francisco, California, February 14, 1911.

"To the Honorable, the Senate and Assembly of the State of California in session:

"The Supreme Court of the State of California and the individual members thereof, to the end that the truth may be known and by you made a matter of public record, respectfully request that, by appropriate committee or committees, you investigate the conduct of this court in the matter of the granting of the petition of Abraham Ruef for rehearing in the case entitled 'The People of the State of California, Plaintiff and Respondent, vs. Abraham Ruef, Defendant and Appellant (Crim. No. 1655)'; and also that you investigate any other or further matters touching the conduct of the Supreme Court and the transaction of its business which to your honorable bodies shall seem advisable.

"Respectfully submitted,

"Wm. H. Beatty, C. J.; F. W. Henshaw, J.; F. M. Angellotti, J.; W. G. Lorigan, J.; M. C. Sloss, J.; Henry A. Melvin, J."

"P. S.—Justice Shaw, being temporarily absent from the city, it has been impossible to get his views in reference to the above communication. A copy of it has been forwarded to him at Los Angeles for his consideration and action."

Justice Shaw, on February 14, sent the following communication to the Legislature:

"February 14, 1911.

"To the Honorable the Senate and Assembly of the State of California in session:

"The Supreme Court of the State of California, and the individual members thereof, to the end that the truth may be known and by you made a matter of public record, respectfully request that, by appropriate committee or committees, you investigate the conduct of this court in the matter of the granting of the petition of Abraham Ruef for rehearing in the case entitled 'The People of the State of California, Plaintiff and Respondent, vs. Abraham Ruef, Defendant and Appellant (Crim. No. 1655)'; and also that you investigate any other or further matters touching the conduct of the Supreme Court and the transaction of its business which to your honorable bodies shall seem advisable.

"Respectfully submitted,

"LUCIAN SHAW, J."

ferred to the Committee on Rules. That committee, on February 17, recommended that a special committee of four members of the Assembly and three members of the Senate be appointed to investigate all matters referred to in the communication.

The Assembly adopted a concurrent resolution to that end.

In the Senate, the resolution was referred to the Judiciary Committee. Favorable action on the part of the Judiciary Committee would unquestionably have been followed by the adoption of the resolution by the Senate. The Supreme Court would then have been investigated by committee as its members asked.

But the question was raised as to what would come of such an investigation.

The Legislature could, of course, have appointed such a committee; the committee could have "investigated." But, regardless of its findings, the committee would have been powerless to take definite action. The only definite action that could have been taken would have been by impeachment proceeding, or by concurrent resolution placing the justices on their defense. These proceedings are provided in the State Constitution, but neither invokes the procedure which the justices asked, investigation "by appropriate committee or committees."

The Assembly resolution was not reported out of the Senate Judiciary Committee.[146]

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146 The Reactionary press endeavored to make it appear that the Legislature would investigate the Supreme Court by committee. For example, the San Francisco Examiner in its issue of March 1, 1911, stated (column 1, page 2): "A legislative committee has been appointed to investigate the Supreme Court, but whatever the findings of this committee will be it will have no effect on the status of Ruef."

Under the provisions of the State Constitution, impeachment proceedings must originate in the Assembly, and the trial take place in the Senate.

But as Senator Shanahan had pointed out, such a trial, considering the technical defense that could be expected, would require months of discussion and debate. The pay of each member of Senate and Assembly is limited to $1000 for the session. The expenses of the average member for the regular session require that amount and more. If impeachment proceedings were brought, the members would be required to remain at Sacramento, at their own expense, without pay, for an indefinite period. This consideration alone made impeachment proceedings impracticable.

There remained the procedure of removal by Concurrent Resolution.

Charles S. Wheeler, in the Heney-Wheeler debate, had pointed out that under this procedure all that would be necessary to place a member of the bench on his defense would be to serve him with a copy of the complaint. The accused officer could be given as short a shrift as the Legislature saw fit. Without further consideration, according to Wheeler, the Legislature could then oust the accused judge from office, even though he might be innocent of wrongdoing.

William Denman had pointed out that a judge could be removed by Concurrent Resolution on the ground that he was "out of sympathy with our institutions," or because his "attitude was wrong."

Unquestionably if these gentlemen, both learned in the law, are to be accepted as authorities on the subject,

the Legislature could have summarily removed any or all of the Justices of the Supreme Court, even though their conduct in the Ruef case and all other cases were above reproach.

But the Legislature took no such drastic action.

And why not?

Because, regardless of their views of the conduct of individual Justices, or of the Justices' affiliations, associations and attitude, the members of the Legislature recognized that The People of California would not sanction arbitrary removal of any official, be he Chief Justice or Constable.

"The People," said a Progressive leader to the writer during the days when the proposed action against the Supreme Court was under discussion, "do not desire arbitrary ouster any more than they desire whitewash of the members of the Supreme Court."

When Mr. Wheeler had suggested removal of Judges by concurrent resolution, he had stated, "All that stands between him (the accused Judge) and your wrath is your high oath as a member of the House and the Senate."

But it seems there is something more standing between the Justices and ouster; namely, the sense of justice of The People, which will not permit arbitrary removal from office of a judge whom The People's votes have elevated to the bench.

A member of the Legislature might violate that "high oath" to which Mr. Wheeler referred so flatteringly. But a Legislature will hesitate long before outraging the sense of justice of The People.

The Legislature will never, in California, while pub-

lic opinion continues as it is, arbitrarily remove a judge from office by concurrent resolution.

And, the proponents of provision for Recall of the Judiciary insisted, the same public opinion which will always prevent arbitrary removal by the Legislature, will prevent unjust removal by means of the Recall, for the fair-minded people would not sanction such a course.

"If you had," said Heney in the Heney-Wheeler debate, "a Recall that trusted the right of removal, instead of trusting it to 120 members of the Legislature, trusted it to 380,000 electors, and required the majority of them to vote for removal of an accused Judge before he could be deprived of his office, what honest Judge would stand in fear of it."

And to this view, as the session advanced, many Progressives who in the beginning had doubted the wisdom of applying the Recall to the Judiciary, found themselves converted.

CHAPTER IX.

ADOPTION OF THE RECALL AMENDMENT.[147]

Opponents of the Measure Resisted Its Adoption at Every Stage of Its Consideration by Senate and Assembly—The Amendment Was Finally Adopted, with Only Fourteen Members of the Legislature Voting Against It.

Those charged with drafting the Recall constitutional amendment, did not have the measure ready for introduction until nearly three weeks after the Legislature had convened. The amendment provided for the Recall of all elected officers, executive, legislative, judicial.

The measure was introduced in the Senate on January 20, but nearly a month elapsed before the Senate

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147 The Recall amendment was introduced in the Upper House by Senator Lee Gates of Los Angeles, and in the Lower House by Assembly William C. Clark.

The main provision of the Senate (the Gates) amendment, as it was originally introduced, were, that any elected officer of the State could be subjected to a Recall election upon the petition of qualified electors, equal to 8 per cent. of those voting for all candidates for Governor, with the further proviso that an officer elected in the State at large, rather than in a political subdivision, could only be subjected to such Recall election by a petition signed by at least 50,000 qualified electors. The officer sought to be recalled, as well as those nominated to succeed him, would all have their names placed upon the Recall ballot, and the one receiving the highest vote would be declared selected to serve the remainder of the incumbent's term.

The Clark Assembly amendment was not introduced until five days after the introduction of the Gates measure. During these five days a number of conferences were held between Senator Gates, Assemblyman Clark and others interested in the direct legislation. As a result of these conferences several changes were made in the Clark amendment before its introduction.

The Clark measure omitted provision that a petition for the recall of a State officer must be signed by a minimum of 50,000

Judiciary Committee, to which it had been referred, acted upon it.

The delay was due to several causes.

In the first place the proponents of the measure had many amendments to offer, even after the measure had been introduced. The preparation of these amendments caused more or less delay. And the opponents of the

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electors. The Clark measure also differed from the Gates amendment by providing that preceding the names of the candidates upon the Recall ballot there should be the question: "Shall (name of person against whom the Recall petition is filed) be recalled from the office of (title of office)?" An additional provision was made that unless the elector vote "yes" or "no" on this question his vote for candidates for the office shall not be counted. Under the Clark amendment, the incumbent could be recalled only in the event of a majority of all those voting at the election, voting in favor of declaring his office vacant. The incumbent's name is not, under this provision, placed among the names of the candidates opposing him, on the ground, that if the majority of those voting vote in favor of the incumbent's recall, it is not just that his name should be again voted upon. If the majority of those voting at the election shall vote for the recall of the incumbent he shall be removed from office, upon the qualification of his successor. His successor shall be that candidate who, at the Recall election, receives the highest vote for the office. If a majority do not vote for the incumbent's recall he will, of course, continue in his office.

The Senate (Gates) measure was amended to include these changes. There were also two other important amendments adopted in the Senate Judiciary Committee.

The first of these raised the percentage required to institute Recall proceedings against the State official from 8 per cent. to 12 per cent.

This did away with the minimum number of 50,000 signatures required under the original draft of the amendment to invoke a Recall election against an official.

The second change provided that all petitions for the State-wide officer shall be signed in at least five counties by not less than 1 per cent. of the entire vote cast in each of said counties for all the candidates for Governor at the last preceding general election.

The second of these amendments raised the percentage required to subject the district officer, that is to say, an officer elected in a political subdivision of the State, to 20 per cent. instead of 12 per cent.

The amendment provides that no officer shall be subject to Recall until he shall have held office for six months. This does not apply to members of the Legislature who are made subject to Recall five days after the organization of the Legislature. In the event of the incumbents sought to be ousted not being recalled, the legal expenses of the Recall election are to be paid by the State.

As in the case of the Initiative and Referendum amendment the Recall is made applicable to cities and counties.

Recall were quite willing that these delays should be prolonged.

These opponents, some of whom had by long practice grown clever as blockers of good legislation, not only acquiesced in the delays, but craftily encouraged them. The friends of the measure found it very easy not to bring the Recall to a vote in the Senate Judiciary Committee to which it had been referred, but along toward the middle of February, when they were ready to proceed, these proponents found difficulty in compelling committee action.

On February 15, an attempt was made to bring the amendment to final vote. But no vote was taken, and the measure went over until the following day, February 16. On February 16, a series of objections from various opponents held the fateful, final vote off for another twenty-four hours. But on February 17, after three days of effort, the Senate Judiciary Committee by a vote of 10 to 3, reported the Recall amendment back to the Senate with the recommendation that it be adopted.

But this action did not come without a struggle which kept the committee in session for hours beyond the regular time of adjournment, although the effort against the Recall was in pitiful contrast to the blocking tactics which were so effectively used in the Legislature when Wolfe was Senate leader and Leavitt his right-hand man.

Senator Wolfe wanted such provision in the measure as would prevent the Recall being twice applied to the same official during a single term of office.

Wolfe's proposal stirred Senator Gates, author of the amendment, to scathing reply. With sting-filled, hon-

eyed phrases, Gates pointed out that an official against whom the Recall has been unsuccessfully invoked might proceed "to take it out" of those who had unsuccessfully attempted to recall him, thereby making his recall all the more necessary.

Under Gates' velvet hammering, Wolfe's contention shaded away and was lost sight of.

The next move was to employ a Progressive against the measure. This was in accordance with the fixed policy of the old-time machine element, never to permit one of its creatures to do what a man of reputation and integrity could be inveigled into doing. The way had, without the Reactionaries' move, been very well prepared for such a course.

At a previous meeting of the committee, Senator Larkins, Progressive and Independent, had proposed several amendments providing:

(1) That the Recall be extended to apply to appointive as well as to elective officers.

(2) That signers of a recall petition be restricted to those electors who had voted for the official to be recalled.

(3) That the Recall should not be applied to the judiciary until six months after the act complained of.

When Wolfe's objection had been disposed of, these proposed amendments came up for consideration. They were known as the "Larkins amendments," and were voted upon separately.

Senator Gates pointed out that, as regards the first, the effect of making appointive offices subject to the Recall, would be to make appointive offices elective.

Cartwright showed that the effect of the adoption of this first Larkins amendment would be to throw the whole Recall measure into confusion. Shanahan stated that he opposed any such policy, holding that the elected official should be made responsible not only for himself but for his appointees. The way to reach the appointees, Shanahan insisted, is through the elected official. The proposed change in the measure was finally defeated by a vote of 2 to 11.

The next of Senator Larkins' amendments provided that signatures to a Recall petition should be restricted to those electors who had voted for the official to be recalled. The adoption of this amendment would have left the Recall practically inoperative. It was read as "Senator Larkins' amendment," but Larkins had had time to think the amendment over, and evidently had realized its significance.

"I withdraw that amendment," announced Larkins.

Perplexity and surprise appeared upon the faces of the opposition.

Senator Wright assured Larkins that the proposed amendment was good.

But Larkins refused to be changed.

Whereupon, Senator Juilliard, to the surprise of the friends of the Recall, accepted the amendment as his own, and moved its adoption.

But this amendment, like the other, was overwhelmingly defeated, only Juilliard and Wright voting for it.

The third of the "Larkins amendments" was defeated by a vote of 2 to 11.

This disposed of the "Larkins amendments."

The next move came from Wright. Wright offered

an amendment to exclude the Judiciary from the terms of the measure.

The Progressives had been on the lookout for this amendment.

"If," announced Senator Shanahan, "there is any chance of that amendment's prevailing, I want to be heard upon it. If there be any official who should be made subject to the Recall it is the Judge."

The Wright amendment, however, had no chance of prevailing. It was defeated by a vote of 4 to 8.[148]

This brought the committee to a point where final action on the Recall measure could not with a good majority for it, be further delayed. It was a moment of evident depression for a number of the Senators present.

Senator Wolfe announced that while he was not particularly in favor of the Recall idea, still he would have given the measure favorable committee vote had it not been that the Recall of Judges was retained among its provisions.[149]

Senator Curtin stated that, although he would vote to refer the measure back to the Senate, nevertheless he reserved the right to take whatever course he deemed best on the floor of the Senate, because the Recall of

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148 The Judiciary Committee vote on Wright's amendment to exclude the Judiciary from the provisions of the Recall was:
For the Wright amendment—Curtin, Juilliard, Wolfe, Wright—4.
Against the Wright amendment—Caminetti, Cartwright, Gates, Hewitt, Larkins, Shanahan, Thompson, Stetson—8.

149 For Senator Wolfe's attitude on the Initiative, State-wide vote for United States Senators and other Progressive measures and reforms, see his votes in the Senate Journals for the last fourteen years. It is unfortunate that Senator Wolfe's denunciation of these reforms, and his abuse and ridicule of those who have advocated them, are not of record.

the Judiciary was permitted under the terms of the measure.

Senator Larkins announced that his vote in committee would be negative, for he believed that no Judge should be called to account until at least six months had elapsed after the act complained of.

Larkins intimated, however, that he would support the measure on the Senate floor.

The motion was that the Recall amendment be referred back to the Senate with the recommendation that it be adopted. The motion prevailed by a vote of 10 to 3.[150]

The first important skirmish in the fight for the Recall had been won by the Progressives.

But before the Recall amendment could be submitted to The People, the Progressives had to win three other skirmishes, one on the floor of the Senate, one in the Assembly committee, to which the Senate Recall measure, after its adoption in the Upper House, would be submitted, and one on the floor of the Assembly.

Defeat in the Senate Judiciary Committee, brought the Reactionaries, who in the contest over the Recall had rather kept in the background, out in the open. Their efforts were directed against the Recall of the Judiciary, the weakest point, for here division showed among the Progressives.

When the measure came up in the Senate for final

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150 The Senate Judiciary Committee vote on the Recall amendment was as follows:

For the Recall—Boynton, Caminetti, Cartwright, Curtin, Gates, Hewitt, Juilliard, Shanahan, Thompson, Stetson—10.

Against the Recall—Larkins, Wolfe, Wright—3.

consideration, Senators Wright and Wolfe led the debate against it.

Wright took the lead by offering an amendment to exclude the Judiciary from the terms of the measure. Wright's proposed amendment was voted down,[151] which brought the Senate to the consideration of the Recall measure itself.

The debate for the proponents of the Recall was opened by Senator Lee Gates.

The right of The People, Gates contended, to remove officers even of the Judiciary, is not disputed. The issue accordingly narrowed down to a question of expediency. Is it wise to extend the principle to the Judiciary?

Senator Gates called the attention of his hearers to the fact that whereas we have limited the powers of legislators and executives, judicial officers are clothed with arbitrary power. He showed that it is a recognized principle that arbitrary power can come only from The People. By providing for the Recall of the Judiciary, he contended, The People are but taking back into the hands of the supreme sovereignty, the power with which they have parted.

Quoting the Income Tax decision as an example, Sen-

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151 The vote on Wright's amendment was as follows:

For Wright's amendment—Boynton, Cassidy, Curtin, Cutten, Estudillo, Finn, Hewitt, Martinelli, Thompson, Wolfe and Wright —11.

Against Wright's amendment—Avey, Beban, Bell, Bills, Birdsall, Black, Bryant, Burnett, Caminetti, Campbell, Cartwright, Gates, Hans, Hare, Holohan, Hurd, Juilliard, Larkins, Lewis, Regan, Roseberry, Rush, Sanford, Shanahan, Stetson, Strobridge, Tyrrell, Walker and Welch—29.

When Wright, in the Judiciary Committee, had moved to exclude the Judiciary from the provisions of the Recall, Senators Hewitt and Thompson voted against Wright's amendment. Senator Boynton was present in the committee room but did not vote on this issue.

ator Gates showed the abuse of the power which the Courts have arrogated to themselves. In that Income Tax case, Gates stated, the Supreme Court overturned its own decisions of a century, overruled Congress, overruled the President, overruled four of the nine Justices of the Court itself. And the decision thus arbitrarily rendered, he continued, is the law of the land to-day.

"In providing for the Recall," concluded Gates, "we are making the creator greater than the creature; we are taking back the arbitrary power which the creature has arrogated to itself, which has made it greater than its creator. No honest Judge need fear to have The People take back the power which has been taken from them."

Senator Wolfe replied to Gates.

Wolfe contended that the Recall is based on the theory that representative government has failed in this country. With this idea as a basis, Senator Wolfe proceeded to demonstrate that representative government has not failed. "America," he said, "the land of the free, stands foremost among the nations of the world." Hence the Recall is unnecessary.[152]

Taking up the Recall of the Judiciary, Wolfe proudly referred to the fact that men of the standing of Curtis

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152 The edge was taken off Wolfe's argument by a curious interruption from Senator Lewis of San Joaquin.

Wolfe had drawn a pleasing picture of "our ancestors," as they framed the Federal Constitution.

"It is a pity," Wolfe thundered, "that Senator Gates could not have been there, one of them, to write the Recall into the Constitution."

Senator Lewis of San Joaquin had somehow gotten it into his head that Wolfe was talking about the State Constitution.

"Senator Wolfe," broke in Lewis, "were you there?"

This astonishing question disconcerted Wolfe.

"Was I there?" he stammered.

"Well," came back Lewis, "I was."

The whole Senate Chamber went dazed for a moment.

"And," continued Lewis, "if we had known about the Recall

Lindley and Charles S. Wheeler were with him on this issue. He concluded his argument by going over the ground covered by Wheeler in the Heney-Wheeler debate to show that the Recall need not be applied to the Judiciary because a Judge may be removed from office by impeachment proceedings, or by concurrent resolution adopted by two-thirds the members of the Senate and Assembly.

Senator Wright followed Wolfe. Wright's argument was an able presentation of the side of those who oppose the principle of the application of the Recall to the Judiciary.

Wright spoke with considerable feeling, passionately denying that he is a Reactionary, or that he opposes reform measures, and denouncing Francis J. Heney for the part which Heney took in support of the Recall of the Judiciary in the Heney-Wheeler debate, characterizing him as "a man who spoke in this chamber with treason upon his lips."

In concluding, Wright stated that he would vote for the Recall of legislative and executive officers, from Governor down, but not for the Recall of the Judiciary.

When the final vote came, only two Senators, Curtin and Martinelli, joined with Wolfe and Wright in voting

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we would have put it into the Constitution of this State. And it isn't too late to put it in now."

It was then that the crowd realized that the two Senators had their Constitutions mixed.

When the roar of laughter had subsided, Wolfe showed himself decidedly annoyed.

"Mr. President," he complained, "I don't like to be interrupted by trivial questions."

This display of heat called forth more laughter, which placed the ordinarily serene Wolfe at great disadvantage.

against the Recall. The amendment was adopted by a vote of 36 to 4.[153]

The Progressives had won the second skirmish for the Recall principle.

Having failed to defeat the Recall amendment, or any part of it, in the Senate, the opponents of the measure redoubled their efforts in the Assembly. The Senate Judiciary Committee, with but three votes against the measure, had passed favorably upon it. The Senate by a vote of 36 to 4 had followed the Judiciary Committee's course and recommendation. Nevertheless, twenty-seven of the eighty members of the Assembly were enough to defeat the measure, fifty-four votes in the Assembly being required to submit a constitutional amendment to The People for their approval or rejection.

By the time the Gates Recall measure had reached the Assembly, the Assembly Committee on Direct Legislation had passed favorably on the companion amendment which had been introduced by Assemblyman Clark, and had referred it to a second committee, the Assembly Committee on Constitutional amendments.

The Senate (Gates) measure was referred to the Assembly Committee on Direct Legislation.

This created a situation in which two Recall measures, practically identical, were pending at the same time, before separate Assembly committees.

The usual procedure would have been to leave the

153 The Senate vote on the Recall amendment was as follows: For the Recall—Avey, Beban, Bell, Bills, Birdsall, Black, Boynton, Bryant, Burnett, Caminetti, Campbell, Cartwright, Cassidy, Cutten, Estudillo, Finn, Gates, Hans, Hare, Hewitt, Holohan, Hurd, Juilliard, Larkins, Lewis, Regan, Roseberry, Rush, Sanford, Shanahan, Stetson, Strobridge, Thompson, Tyrrell, Walker, Welch—36.

Against the Recall—Curtin, Martinelli, Wolfe, Wright—4.

Clark amendment in the Committee on Constitutional amendments, and press the Gates duplicate, which had been acted upon in the Senate, to final adoption.

This is what the proponents of the Recall had planned, and what was finally accomplished, but only after the opponents of the Clark-Gates measure had made a curious play to take advantage of the situation.

The Committee on Direct Legislation having already passed favorably upon the Clark duplicate, there was little reason to believe that that committee would not take the same course with the Gates measure.

Nevertheless, when the Senate measure was taken up by the Direct Legislation Committee, the opposition was on hand to protest against the measure being recommended for adoption, unless the Judiciary be excluded from its provisions. Assemblymen Bishop and Brown led the opposition. The measure was defended by Senator Lee Gates, and Congressman William Kent.

There was nothing new in the arguments advanced by the objectors; nothing new in the replies. The proceedings were mere repetition of a twice-won skirmish. The outcome was the same, resulting in complete defeat of the opposition. The committee voted to send the measure back to the Assembly with the recommendation that it be adopted. The Assembly fixed March 7 as the day for the final vote. The opposition thereupon formed plans for carrying their fight against the measure to the floor of the Assembly.

On the afternoon of March 6, the day before the final vote was to be taken, Assemblyman Bishop appeared before the Assembly Committee on Constitutional Amend-

ments, with which the Clark duplicate of the Gates measure had been left, and endeavored to have the duplicate resurrected.

Bishop proposed that the Clark duplicate be amended by striking out provision for the recall of all officials, except the Judiciary, and reported back to the Assembly immediately.

The next move of the Bishop plan, was to amend the Gates measure on the floor of the Assembly, by striking out the provision for the Recall of the Judiciary.

Under this arrangement, there would be two Recalls before the Assembly. One of them, the Clark measure, providing, as Bishop would have had it amended, for the Recall of Judges alone; and the second, the Gates measure, which had already passed the Senate, providing, should the Bishop amendment be adopted, for the Recall of all elected officials except Judges.

But the Committee refused to assist in any such undertaking. The Clark amendment was not reported out. Bishop and his associates thereupon prepared to make their fight on the floor of the Assembly.

On the night before the final vote was taken, thirteen [154] Assemblymen who opposed the Recall of Judges, met in caucus, and agreed to stand together on the floor of the Assembly to divide the measure.

Somewhat extravagant boasts were made. The opposition held that it controlled twenty-eight Assembly votes, one more than sufficient to defeat the Recall amendment. Unless the Gates-Clark people agreed to division,

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[154] Those generally credited with attending the caucus were: Brown, Rosendale, Bishop, Schmitt, Freeman, Hall, Walker, Coghlan, Cronin, Crosby, Griffiths, Jones, Stevenot—13.

the opposition threatened to use the twenty-eight votes to defeat the Gates-Clark measure.

On the floor of the Assembly, the leadership in the fight against the Gates-Clark Recall passed into abler hands than those of Assemblyman Bishop. Assemblyman M. R. Jones of Contra Costa County [155] headed the opposition.

Mr. Jones offered an amendment to exclude Justices of the Supreme Court, Justices of the District Court of Appeal and Judges of the Superior Court, from the Recall provisions.

Here was the test of the strength of the Recall principle in the Assembly. The amendment which Mr. Jones had proposed had behind it the Reactionaries bent upon defeating the Recall in any form, and the ultra-conservative Progressives, who were opposing the application of the Recall to the Judiciary. Nevertheless, Jones' amendment, after a day of debate, was defeated by a vote of 20 to 59.[156] The 28 votes which the opposition had boasted, had not shown.

The vote on the amendment proposed by Mr. Jones was decisive defeat of the opponents of the Recall.

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155 Assemblyman Jones during the session showed himself one of the cleverest men who have sat in the Lower House of the California Legislature. But Assemblyman Jones can scarcely be regarded as a Progressive. In the reorganization of California politics during the next half decade, that must come after the re-setting of the lines which has followed Johnson's election, the case of Assemblyman Jones bids fair to be an interesting study in politics. Mr. Jones is connected with the Law Department of the Southern Pacific Railroad Company.

156 The vote on the Jones amendment was as follows:

For the Jones amendment—Messrs. Bennink, Bishop, Bliss, Brown, Coghlan, Cronin, Crosby, Freeman, Griffiths, Hall, Harlan, Jones, Lynch, Maher, McGowen, Rosendale, Schmitt, Stevenot, Sutherland and Walker—20.

Against the Jones amendment—Messrs. Beatty, Beckett, Benedict, Bohnett, Butler, Callaghan, Cattell, Chandler, Clark, Cogswell, Cunningham, Denegri, Farwell, Feeley, Fitzgerald, Flint, Gaylord,

Other amendments were proposed by Brown and Bishop, but they lacked hearty backing or support. The effective opponents of the Recall had, with the announcement of the vote on the Jones amendment, recognized their defeat. Other amendments were offered, but Mr. Jones was author of none of them. When the final roll call came the Recall amendment was adopted by a vote of 70 to 10, every member being in his seat and voting.[157]

In Senate and Assembly 106 legislators voted for the Recall amendment, and 14 against. Every member of both houses voted for or against it. Seldom, if ever, has the entire vote of the California Legislature been cast for a measure. In this particular, the record of the Recall amendment is unique.

The consideration given the amendment was also exceptional. Never before, probably, had a measure before the California Legislature been so thoroughly studied and discussed. Especially is this true of that feature of

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Gerdes, Griffin of Modesto, Guill, Hamilton, Hayes, Held, Hinkle, Hewitt, Hinshaw, Jasper, Joel, Judson, Kehoe, Kennedy, Lamb, Lyon of Los Angeles, Lyon of San Francisco, Malone, March, McDonald, Mendenhall, Mott, Mullally, Nolan, Polsley, Preisker, Randall, Rimlinger, Rodgers of San Francisco, Rogers of Alameda, Rutherford, Ryan, Sbragia, Smith, Stuckenbruck, Telfer, Tibbits, Walsh, Williams, Wilson, Wyllie, Young—59.

157 The Assembly vote on the Recall amendment was as follows:

For the amendment—Messrs. Beatty, Beckett, Benedict, Bennink, Bliss, Bohnett, Butler, Callaghan, Cattell, Chandler, Clark, Cogswell, Cunningham, Denegri, Farwell, Feeley, Fitzgerald, Flint, Freeman, Gaylord, Gerdes, Griffin of Modesto, Griffiths, Guill, Hamilton, Hayes, Held, Hewitt, Hinkle, Hinshaw, Jasper, Joel, Judson, Kehoe, Kennedy, Lamb, Lynch, Lyon of Los Angeles, Lyon of San Francisco, Maher, Malone, March, McDonald, McGowen, Mendenhall, Mott, Mullally, Nolan, Polsley, Preisker, Randall, Rimlinger, Rodgers of San Francisco, Rogers of Alameda, Rosendale, Rutherford, Ryan, Sbragia, Slater, Smith, Stevenot, Stuckenbruck, Sutherland, Telfer, Tibbits, Walsh, Williams, Wilson, Wyllie, Young—70.

Against the amendment—Messrs. Bishop, Brown, Coghlan, Cronin, Crosby, Hall, Harlan, Jones, Schmitt and Walker—10.

the amendment which extends the principle of the Recall to the Judiciary. Had the vote on the measure been taken on the opening day of the session, a different showing would unquestionably have been made. But after thorough investigation and consideration members who had, at the beginning of the session doubted the policy of making judges subject to the Recall, came to the view expressed by Heney as set forth in the previous chapter; and by Governor Johnson,[158] who, when the final contest in the Assembly had been won, said: *"Under an elective system the Recall should be applied to all officers. It will make no weak Judge weaker, nor a strong Judge less strong. It will be a warning and a menace to the corrupt only."*

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158 Governor Johnson in an interview printed in the Sacramento Bee the day following the adoption of the Recall by the Assembly said:

"We began this administration with a very simple plan for accomplishing what we told The People of the State of California we intended to do.

"The one pledge to The People was that we would restore this Government to The People.

"The administration sought to do this by taking from those who had represented private interests in the Government, and making the public service responsible alone to The People.

"When the administration had accomplished its design in this respect, then the Legislature had its part to play in bringing to The People the power by which The People could continue to make their servants responsive alone to the Government.

"The Legislature accorded this power by the adoption of the Initiative and Referendum amendment in the first instance, and of the Recall, which was yesterday adopted, in the last instance.

"The plan by which we began the administration has therefore been as far as possible consummated.

"The public service, wherever it could be made so has been made servant of The People alone.

"With the adoption of the Constitutional Amendments providing for the Initiative, Referendum and Recall, it is now up to The People for themselves to determine whether the power shall continue to be lodged hereafter, where, under our form of government it always should be, in The People themselves.

"Under an elective system the Recall should be applied to all offices. It will make no weak judge weaker, nor a strong judge less strong. It will be a warning and a menace to the corrupt only."

CHAPTER X.

Direct Legislation Measures.

The Legislature, So Far as Lay in Its Power, Granted, by Statute, the Recall, Initiative and Referendum to Municipalities and Counties.

In addition to the Recall, and the Initiative and Referendum amendments submitted to the electors for ratification, the Legislature passed two Direct Legislation measures. The first of these, introduced by Senator Marshall Black of Palo Alto, grants powers of the Initiative, Referendum and Recall to municipalities of the fifth and sixth classes,[159] and the second, introduced by Assemblyman Held of Mendocino, extends the same powers to counties.[160]

The purpose of these measures was to establish the Recall, Initiative and Referendum in California so far as can be done without Constitutional amendment. Neither of the two measures, however, was given the

159 All California cities, other than those of the fifth and sixth classes, may adopt charters, in which provision may be made for the Initiative and Referendum, and for the Recall. The principal cities of California, San Francisco and Los Angeles, and most of the smaller cities, have already availed themselves of this opportunity.

160 Governor Johnson in his inaugural address said on this point: "It has been suggested that by immediate legislation you can make the Recall applicable to counties without the necessity of constitutional amendment. If this be so, and if you believe in the adoption of this particular measure, there is no reason why the Legislature should not at once give to the counties of the State the right which we expect to accord to the whole State by virtue of constitutional amendment."

careful consideration accorded the amendments. Questions were raised as to the constitutionality[161] of the measures. But the bills were finally passed.

Nevertheless, there was opposition. Since the opponents of Direct Legislation—while pretending, by the way, to be in hearty accord with it—could not defeat the Direct Legislation measures, the attempt was made to amend them into ineffectiveness.

The Black bill had been referred to the Senate Committee on Municipal Corporations. That committee, in the absence of several members known to favor the measure, raised the percentage of votes required to invoke a Recall election from 25 to 40 per cent.[162] The measure was then referred back to the Senate with the recommendation that it become a law with the 40 per cent. provision.

Had the amendment been adopted, the high percentage required to invoke a Recall election, would have been practically prohibitive.[163]

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161 The Held law, for example, provides for the recall of county supervisors. The terms of office of supervisors are fixed by the State Constitution. The objection was raised that an amendment of the Constitution is necessary before supervisors can be made subject to the Recall principle.

162 The percentages required for an Initiative petition were also raised, but the increase was not necessarily prohibitive as in the case of the Recall. All the percentages, as provided in these bills, it will be observed, are high. This is due to the fact that they affect comparatively small bodies of voters, and a lower percentage would make the number of individuals necessary to validate a petition unreasonably few. This is particularly true of the Black bill, which affects the smallest municipalities of the State.

163 Milton T. U'Ren, Secretary and Treasurer of the Direct Legislation League of California, in speaking of the committee's amendment, said: "The effect of such a requirement (the 40 per cent. requirement) will be, of course, to absolutely prevent any use of the power granted. It would be just as well and certainly a great deal more honest to vote directly against the bill. To those who have made a study of the operation of Direct Legislation in other States as well as this, such a requirement is absolutely ridiculous."

The committee's action was vigorously denounced by the proponents of the measure. These proponents, however, finally consented to a compromise, by which the percentage was fixed at 33 per cent. With this percentage, the measure finaly passed the Senate without a dissenting vote.[164]

But the Assembly refused to accept the increase, and by amendment restored the percentage to the original 25 per cent. The Senate accepted the change, and with the Recall percentage the same as when the measure had been originally introduced, the Black bill went to the Governor for his signature.[165]

The Initiative and Referendum provisions of the measure require a petition signed by 30 per cent. of the electors, as shown by the last preceding general municipal election, to call a special election to vote upon an initiated measure. If the proposed law is to be voted upon at a general municipal election, a 15 per cent. petition is sufficient to have the measure submitted to the elect-

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164 Senate vote on Senate Bill 360 was as follows:

For the bill—Avey, Bell, Bills, Birdsall, Black, Boynton, Caminetti, Cartwright, Cassidy, Curtin, Cutten, Finn, Gates, Hare, Hewitt, Holohan, Hurd, Juilliard, Larkins, Lewis, Martinelli, Regan, Roseberry, Rush, Sanford, Shanahan, Stetson, Strobridge, Thompson, Tyrrell, Walker, Welch, Wolfe and Wright—34.

Against the bill—None.

165 The Assembly vote on Senate Bill 360, giving the Initiative, Referendum and Recall to municipalities of the fifth and sixth classes, was as follows:

For the bill—Beatty, Beckett, Benedict, Bennink, Bishop, Bliss, Bohnett, Brown, Butler, Callaghan, Cattell, Clark, Coghlan, Cogswell, Cronin, Crosby, Cunningham, Denegri, Feeley, Flint, Freeman, Gaylord, Gerdes, Guill, Hamilton, Hayes, Held, Hinkle, Hinshaw, Jasper, Joel, Judson, Lamb, Lynch, Lyon of Los Angeles, Lyon of San Francisco, Maher, McDonald, Mendenhall, Mott, Polsley, Preisker, Randall, Rimlinger, Rodgers of San Francisco, Rogers of Alameda, Rosendale, Sbragia, Schmitt, Slater, Smith, Stevenot, Sutherland, Telfer, Tibbits, Walsh, Wilson and Young—58.

Against the bill—Jones—1.

ors. To compel the submission of an act that has been passed by the municipal legislative body to a referendum vote of the city, a 25 per cent. petition is required.

The Held bill (Assembly bill 100) follows the same general provisions of Senate bill 360, except that the Held bill applies to counties instead of to municipalities.

Under the Held bill, a 20 per cent. petition, estimated on the vote for Congressman cast in the county at the last preceding Congressional election, is required to call a special election to pass upon an initiated measure; a ten per cent. petition is sufficient to have an initiated measure submitted at a general election.

The percentage required for a petition to submit an act of the Supervisors to a Referendum vote, or to invoke the Recall of a county official, is fixed, in both cases, at 20 per cent.

The Held bill passed both Senate and Assembly without a dissenting vote.

CHAPTER XI.

RAILROAD MEASURES.

The Ineffective Wright Railroad Regulation Law, Which Had, at the 1909 Session, Been Substituted for the Stetson Bill, Was Repealed, and the Eshleman Bill, Based on the Stetson Measure of 1909, Passed—Constitutional Amendments Making Radical Changes in the Provisions Dealing With the Railroad Commission and Its Work Were Submitted to The People.

The key to the record of the 1911 Legislature on railroad regulation is found in Governor Johnson's inaugural address.

"I beg of you," said Johnson, "not to permit the bogie man of the railroad companies, 'Unconstitutionality,' to deter you from enacting the legislation suggested, if you believe that legislation to be necessary; and I trust that none of us will be terrified by the threat of resort to the courts that follows the instant a railroad extortion is resented or attempted to be remedied. Let us do our full duty, now that at last we have a Railroad Commission that will do its full duty, and let us give this Commission all the power and aid and resources it requires; *and if thereafter legitimate work done within the law and the Constitution shall be nullified, let the consequences rest with the nullifying power.*"

The members of the 1911 Legislature did not permit

themselves to be deterred by the bogie man, "Unconstitutionality"; they were not terrified by the threat of resort to the courts;[166] they did what men thoroughly familiar with law governing railroads, and the constitutional provisions affecting railroads, declare to be legitimate work within the law and the Constitution. The 1911 Legislature put upon the California Statute books what has been declared to be the most comprehensive railroad regulation measure that has ever been enacted.

The measure was drawn by Railroad Commissioner John M. Eshleman, Attorney-General U. S. Webb, and State Senator John W. Stetson, author of the Stetson[167] bill of 1909, upon which the 1911 measure is based. The three were assisted by William R. Wheeler, the railroad expert, and Seth Mann, who has long acted for California shipping interests in litigation for reasonable freight rates. Eshleman directed the work of preparing the bill, he, himself, writing the greater part of it. The measure became known as the Eshleman bill.

With the exception of Mr. Wheeler, each of the five framers of the Eshleman act is a lawyer; each has made a special study of railroad legislation; each has exceptional knowledge of the laws governing transportation

166 On January 30, 1911, the Sacramento Bee printed a striking cartoon. It represented the members of the Supreme Court in session, with several documents on the floor in front of the bench. One was labeled "Schmitz decision"; one, "Ruef decision," referring to the order for a rehearing in the Ruef case which was then agitating the State; one, "R. R. decision." Before the bench was a plain citizen, with a hook labeled "RECALL." Justices Henshaw and Lorigan are shown as pulled from the bench with the "Recall" hook; Melvin as half rising from his seat. The caption was: "WILL THIS HAPPEN IN 1912?"

167 For the manner in which the Stetson bill was defeated, and the Wright Railroad Regulation bill—which Attorney-General Webb has humorously described as the Wrong bill—was passed, at the 1909 session, see "Story of the California Legislature of 1909." The Wright law was repealed at the 1911 session.

companies, and keen understanding and appreciation of the limitations upon a State legislative body called upon to enact a railroad-regulating statute.

This is particularly true of Railroad Commissioner Eshleman, who has given the laws governing railroads careful study. Not only has Commissioner Eshleman studied and weighed the constitutional provisions and restrictions of his own State, governing railroad regulation, but he is thoroughly familiar with the railroad law and decisions of other States, as well as with the rules and the decisions of the Federal Courts and the Interstate Commerce Commission.

It is not an exaggeration to say that no attorney in California is more soundly versed in railroad law than is Railroad Commissioner Eshleman. It is equally true that no judge on the Supreme Bench—and the same probably holds true of the judges of the several Appellate Courts—has had better opportunity to inform himself upon questions of railroad law. *The people of California, then, have had the advantage of the best legal talent in the framing of the Eshleman railroad regulation law.*[168]

And to every point in the Eshleman bill, Commissioner Eshleman and his associates applied the test of constitutionality. The best legal authorities in California on the subject of railroad regulation are of the opin-

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168 Governor Johnson in his address at the State University commencement exercises (1911), as reported in the San Francisco Call, took occasion to say of Commissioner Eshleman:

"The University of California has done much for the State, and its future rests largely on what its graduates will accomplish. Here is a university medalist of twenty-seven years ago on my right, and there before me is the hope of the State for the next four years, in the president of the Railroad Commission, John Eshleman, who is a graduate."

ion that the Eshleman law will stand every constitutional test.[169]

The measure was introduced in the Senate by Senator Stetson of Oakland and in the Lower House by Assemblyman Bohnett of San Jose.

As has been said, the Eshleman bill was based on the Stetson railroad measure of 1909. The 1911 measure followed the Stetson bill in its principal provisions, notably in authorizing the Railroad Commissioners in cases of dispute over rates to establish "absolute," or "fixed," rates of railroad charges, to which the railroads shall not fail or refuse to conform, instead of "maximum" rates only, for which the railroads contend.

Then, too, the theory of the Eshleman law, as was also in the case of the Stetson bill, is that all railroad discrimination is unjust; that the physical valuation of railroads is necessary for intelligent consideration of the transportation problem; that the State Board of Railroad Commissioners must be made an effective body.[170]

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169 "If," said a prominent attorney to the writer when discussing the Eshleman law, "the courts find the Eshleman act unconstitutional, it will be because they want to."

170 Heretofore, the struggle for railroad regulation has been between the railroads and the shippers. The shippers have comparatively little care how high the rates may be, so long as the rates be equal and stable, for the consumer in the end pays the rates. Senator La Follette of Wisconsin in discussing the Federal railroad measure touched upon this point: "There is not," he said, "one line in the Statute to give the people reasonable railroad rates. All that has been accomplished is to afford a means of giving equal rates to the shippers."

The policy of the present California State administration goes further. The keynote of Governor Johnson's message to the Legislature on the subject of railroad regulation was the necessity for reasonable rates. "That the necessity for action exists in the matter of fixing railroad rates within the State of California," says Governor Johnson in a message on the subject, which will be found in the Senate and Assembly Journals of Jan. 13, 1911, "is demonstrated by the rates themselves; and that you may thoroughly understand this necessity and may realize the excessive charges with which the people of this State have been

But the Eshleman measure goes even further than the Stetson.

To make the Railroad Commission really effective, for example, the Eshleman law gives the Railroad Commissioners power to punish for contempt corporations and persons that resist the authority which the Commission enjoys under the law. The measure provides that those in contempt of the Commission shall be punished in the same manner and to the same extent as contempts are punishable by courts of record.

Thus the Eshleman bill was well-calculated to meet with even stronger opposition from the railroads than had been given the Stetson bill. Nevertheless, railroad lawyers, although every opportunity was given them to do so, did not appear before legislative committees to protest against the passage of the Eshleman bill as they had done when the Stetson bill was under consideration in 1909.[170a]

On the evening of January 24, the Senate Committee on Corporations and the Assembly Committee on Common Carriers met in joint session to permit the railroad representatives to state publicly their objections to the bill if they had any.

Two years before, Peter F. Dunne of the Southern

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burdened, I quote to you some of the rates that I am informed are now being charged our people. No other demonstration than the mere recitation of these figures is necessary in behalf of any measure designed to afford the people of the State of California adequate relief from the extortion of the transportation companies."

The Eshleman bill, in which Governor Johnson's suggestions are carried out, goes far toward providing means for establishing not only stable rates which will be advantageous to the shipper, but reasonable rates which will do justice to the consumer who, in the final analysis, pays the rates.

170a See "Story of the California Legislature of 1909," Chapters XII, XIII, XIV.

Pacific Law Department, before a similar joint meeting of the two committees, had led in the denunciation of the Stetson bill, provisions of which—all, by the way, contained in the Eshleman bill—Mr. Dunne declared to be unconstitutional. But Mr. Dunne did not appear to protest against the Eshleman bill, nor did any other railroad attorney.

The night of the joint hearing, however, railroad attorneys packed the Senate chamber where the meeting was held. They sat in silence while the proponents of the measure explained the various features of the proposed law.

When the proponents had done, the crowd that packed the chambers bent forward in anticipation of the vigorous objections which the railroad representatives had raised two years before.

But the railroad lawyers continued in silence without a word to say.[171]

Senator L. H. Roseberry was presiding.

"There seems," said Roseberry finally, "to be a spirit

171 Several explanations were given for the silence of the railroad lawyers. One had it that the railroad people realized that the Legislature could not be "bluffed." Another was that the proponents of the Eshleman bill were prepared to meet the arguments that had been advanced in 1909 against the Stetson bill, a fact of which the opponents were well aware.

The railroad agents argued in 1909, for example, that in the Fresno rate decision—one of the most significant productions of the California Supreme Court, by the way—the court had held that the Legislature, under the Constitution, cannot authorize the State Railroad Commissioners to establish fixed or absolute railroad rates. This representation unquestionably had much to do with the defeat of the Stetson bill.

At the joint committee under discussion, Attorney-General U. S. Webb was present with a statement from Justice Shaw of the Supreme Court which set forth that the Supreme Court had made no such ruling.

Justice Shaw's statement had been made before the Commonwealth Club at San Francisco. In part, Justice Shaw said: "It has been recently asserted in public journals and in public discussions that the Supreme Court has decided that, under the

of bashfulness and backwardness on the part of railroad representatives which was not here two years ago."

This sally provoked a smile, but not a word did it fetch from the railroad agents. They sat in somber silence until the meeting adjourned. Then they went out.

In addition to the joint meeting the Senate and Assembly committees met repeatedly for the purpose of considering every detail of the bill. As the situation developed, some time could be gained by passing the measure in the Assembly before the Senate took action

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scheme provided in the Constitution, neither the Railroad Commission nor the Legislature, nor both in co-operation, have power to fix any rate for transportation except maximum rates, and that when such rates are fixed the carrier must be left at liberty to charge any lower rate, and change such rates from time to time, as it pleases within the maximum. For example, that a carrier may lower its rate, temporarily, while it is engaged in making contracts chiefly with large shippers for heavy shipments and for the purpose of giving such shippers an advantage, in effect a rebate, and may immediately raise the rates to the established maximum after the large operators have completed their contracts, and that the Legislature and Railroad Commission are powerless to forbid or prevent this practice.

"I am speaking now, of course, of rates upon lines which have no competitor. It may surprise some of my hearers to be informed that no such decision has ever been made. No case has ever come before the Supreme Court in which any such question was raised, or in which any such statement has been made by the Court. The only conceivable cause for the mistake is a remark made in the course of the argument in the Fresno rate case above mentioned. The Court there said: 'We do not understand that the Railroad Commissioners do more than to prescribe the maximum charge allowable.'

"But this had reference to what the Railroad Commission had done, not to what it might do, or had the power to do. It is scarcely necessary to say that it furnishes no foundation for the supposed doctrine attributed to the court. No such question was involved in that case. In no other case has the subject even been approached. The question whether or not the provision in the Constitution imposing a fine upon carriers who refuse to 'conform' to the rates fixed by the Commission prohibits the carrier from charging a lower rate, or deprives the Commission and the Legislature of power to forbid a carrier to make a change of rate without the consent of the Commission is still an open question so far as the decisions of the Supreme Court are concerned."

upon it. This, the proponents proceeded to do.[172] Assemblyman Bohnett, following a plan formed by himself and Senator Stetson, who had charge of the bill in the Senate, proceeded to bring the measure to final vote in the Assembly. On February 4, the bill passed the Lower House by a vote of 47 to 0.[173]

The measure was not delayed in the Senate. Four days after its passage in the Assembly, by a Senate vote

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172 The incident was made the basis of an article characteristic of the underhanded opposition that was given the Eshleman bill and other Progressive measures. The article appeared in the San Francisco Chronicle of February 6. It set forth that Stetson was annoyed and angry that Bohnett should have forced the bill through the Assembly, before the Senate could act upon it, thus gaining credit which Stetson claimed was deserved by himself.

The article was ridiculous upon its face. Nevertheless, Senator Stetson, on a question of personal privilege, publicly repudiated the story. "Upon my desk this morning," said Stetson, "I observed on the outside sheet of a newspaper a picture labeled with my name and described with the following legend: 'Senator Stetson, who feels slighted by Assembly's action.' The action referred to is the act of the Assembly in passing Assembly Bill No. 463, companion bill to Senate Bill No. 333, in advance of Senate action on the latter. It would be painful to me to think that any of my colleagues believed there were true grounds for the statement in the paper. In these days of untrammeled press, it is often difficult for a man to be effectively jealous of his reputation for honesty or discretion, but I am concerned that I should be charged with so petty a spirit in relation to a matter so fraught with importance to the people of this State. I take this occasion to say that the question of the passage of the bill is of tremendous importance, as I view it; the question of who gets it passed is of a most trifling importance. I therefore wish to say that the action of Mr. Bohnett in presenting the bill for final passage was upon my suggestion, and with my full understanding and approval, though I cannot say it would have been any impropriety on his part, or any occasion for chagrin or annoyance on my own, had the case been otherwise."

173 The Assembly vote on the Eshleman Railroad Regulation bill was:

For the Eshleman bill—Beatty, Benedict, Bennink, Bishop, Bliss, Bohnett, Brown, Butler, Cattell, Cogswell, Cronin, Crosby, Denegri, Farwell, Flint, Freeman, Gaylord, Griffin of Modesto, Hamilton, Harlan, Held, Hewitt, Hinkle, Hinshaw, Jasper, Jones, Joel, Judson, Lamb, Lynch, Lyon of Los Angeles, McGowen, Mott, Randall, Rodgers of San Francisco, Rosendale, Rutherford, Slater, Smith, Stevenot, Stuckenbruck, Sutherland, Walker, Williams, Wilson, Wyllie and Young—47.

Against the Eshleman bill—None.

of 33 to 0, the bill was sent to the Governor[174] for his approval.[175]

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174 The passage of the Eshleman bill was regarded as one of the most noteworthy achievements of the session. Governor Johnson, in an interview printed in the Sacramento Bee, Feb. 9, 1911, said of it:

"The greatest achievement of the present Legislature, and indeed of any Legislature of the State of California in the last few decades, was witnessed yesterday when the railroad bill finally passed the Senate.

"The long fight against the domination of the Southern Pacific at last is ended in triumph for The People. The part that could be performed by the lawmaking body of the State is concluded, and if the Legislature should adjourn to-day it could do so with the full consciousness of duty well performed and of a pledge to the people faithfully and honestly kept.

"The accomplishment in the passage of this Act designed to afford relief to a long suffering commonwealth from the exactions, discriminations and extortions of transportation companies, is a lasting monument to every man who participated in the contest.

"It matters not what ultimately may be the fate of the bill that will become a law as soon as it reaches the hands of the Chief Executive, we have kept faith with the people of the State. It is with the people now to see that their other servants keep the faith as well.

"The real contests henceforth upon railroad rates will be transferred to the Railroad Commission and I know that that Commission will fairly, justly and courageously do its full duty. What wondrous things have happened. But a short year ago the all powerful Southern Pacific ruled the fairest State in the Union as if it were a feudal dependency. One year of agitation and education, of standing for the right, of never swerving or going backward, has redeemed the State, has placed its government in the hands of the people, and we have the remarkable spectacle of the Legislature—so long controlled and manipulated by Mr. Herrin and the Southern Pacific—unanimously passing a bill to give the people their own.

"I congratulate and thank the Legislature, I congratulate the State of California upon the dawn of a new era—a new era wherein justice, fair dealing and the rights of the people shall prevail."

175 The Senate vote on the Eshleman bill was as follows:

For the Eshleman bill—Avey, Beban, Bell, Bills, Birdsall, Boynton, Bryant, Burnett, Caminetti, Campbell, Cassidy, Curtin, Cutten, Estudillo, Finn, Gates, Hans, Hare, Holohan, Juilliard, Larkins, Lewis, Martinelli, Regan, Rush, Sanford, Shanahan, Stetson, Strobridge, Thompson, Tyrrell, Welch and Wright—33.

Against the Eshleman bill—None.

Later in the day Senators Hurd, Hewitt, Walker and Black, as a matter of personal privilege, announced that had they been present in the Senate Chamber when the Eshleman bill was voted upon, they would have voted for the measure.

Of the Senators who voted for the Eshleman bill, Bell, Birdsall, Boynton, Caminetti, Campbell, Curtin, Cutten, Holohan, Lewis, Rush, Sanford, Stetson, Strobridge and Thompson had supported the Stetson bill at the 1909 session; while Bills, Burnett, Estudillo, Finn, Hare, Martinelli, Welch and Wright had supported the Wright bill, as against the Stetson bill.

In addition to the Eshleman Railroad Regulation act, the Legislature adopted three resolutions submitting to the electors amendments to those sections of the State Constitution which deal with railroad and railroad regulation.

The ratification of these amendments is announced as these pages are going through the press. Their ratification makes important changes in the fundamental law of railroad regulation in this State.

The first of the amendments is known as Assembly Constitutional Amendment No. 50.

This amendment makes four principal changes in the Constitution:

(1) That before a railroad company may increase an intrastate rate, under any circumstances whatsoever, it must first secure the consent of the State Railroad Commission.[176]

(2) That the decision of the Railroad Commission upon a showing made as to the justification of the in-

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[176] This change in the State Constitution is made necessary by the decision in the Fresno rate cases.

Article XII, Section 20 of the State Constitution as it at present reads, provides that "whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such standard without the consent of the governmental authority in which shall be vested the power to regulate fares and freights."

This would appear to be clear enough. But in the Fresno rate cases the California Supreme Court held, among other things, that the "governmental authority vested with the power to regulate rates," is the Legislature and not the Board of Railroad Commissioners. The court held further that rates are not lowered for the "purpose of competing" with another common carrier, within the meaning of the Constitution, when they are lowered to meet what the court deemed a "destructive rate" first inaugurated by a rival company.

The change proposed in Assembly Constitutional Amendment No. 50 is intended to clear away the confusion caused by the decisions in the Fresno cases. Under the proposed new wording of the section, no railroad may raise any rate, on any plea, without first securing permission from the Railroad Commission.

crease in a rate shall not be subject to review by the courts except upon the question whether such decision of the Commission will result in confiscation of property.

(3) Eliminates from Article XII, Section 20, of the State Constitution, the clause which prohibits contracts between railroads or other common carriers combining to share earnings.[177]

(4) The Railroad Commission is authorized to make discriminating rates for long distance hauls.[178]

The second of the three constitutional amendments is known as Assembly Constitutional Amendment No. 6. It deals with the Board of Railroad Commissioners, making the following changes:

(1) The number of commissioners is increased from three to five.

(2) Their terms are made six, instead of four years.

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177 The clause thus eliminated from the Constitution reads as follows: "No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying."

178 The vote by which A. C. A. No. 50 was submitted to the people was as follows:

In the Assembly:

For the amendment—Beatty, Beckett, Benedict, Bennink, Bishop, Bliss, Bohnett, Brown, Butler, Cattell, Clark, Cogswell, Cronin, Crosby, Cunningham, Denegri, Farwell, Feeley, Flint, Freeman, Gerdes, Griffin of Modesto, Hayes, Held, Hewitt, Hinshaw, Jasper, Jones, Joel, Judson, Kehoe, Kennedy, Lynch, Lyon of Los Angeles, Lyon of San Francisco, Malone, McDonald, McGowen, Mendenhall, Mott, Polsley, Preisker, Randall, Rogers of Alameda, Rosendale, Rutherford, Ryan, Sbragia, Slater, Smith, Stevenot, Sutherland, Telfer, Williams, Wilson, Wyllie, Young—57.
Against the amendment—None.

In the Senate:

For the Amendment—Avey, Bell, Bills, Black, Boynton, Burnett, Caminetti, Campbell, Cartwright, Curtin, Cutten, Gates, Hewitt, Holohan, Hurd, Juilliard, Lewis, Martinelli, Regan, Roseberry, Rush, Sanford, Shanahan, Stetson, Strobridge, Thompson, Tyrrell, Walker, Welch and Wolfe—30.
Against the amendment—None.

(3) The commissioners are to be appointed by the Governor,[179] instead of elected as heretofore.

(4) Appointments may be made from the State at large, thus doing away with the State Railroad Commission districts. The Legislature, however, is authorized to divide the State into districts for such appointments if it sees fit.

(5) The terms of the commissioners expire on different dates, instead of on the same date as at present.

(6) The Board is authorized to delegate its power to one of its members, which will enable the commission to conduct five investigations at one time.

(7) Existing doubts as to the right of the Legislature to confer additional powers upon the Board are removed.[180]

The third and last of the series of Constitutional

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179 Inasmuch as this amendment has been ratified, the present railroad commissioners will hold office until the first Monday after January 1, 1915. The two additional members provided for in the amendment will be appointed by the Governor to serve until that date. On the first Monday after January 1, 1915, the Governor will appoint five commissioners, the term of one of whom will expire in January, 1917; the terms of two in January, 1919, and the terms of the two remaining, in January, 1921. The commissioners to be appointed after January, 1915, will each serve for six years. Thus no governor will, after the 1915 appointments, appoint a full commission.

On the first Monday after January 1, 1915, Hiram W. Johnson will be Governor of California. He will appoint the five commissioners to hold office as described above. Thus the ratification of Assembly Constitutional Amendment No. 6 assures to the State continuance of the policy of the present administration as regards the regulation of railroads and public service corporations until four years after the first Monday after January 1, 1915, since a majority of the present governor's appointees will hold office until January, 1919.

180 The vote by which A. C. A. No. 6 was submitted to the people was as follows:

In the Assembly:

For the amendment—Beatty, Beckett, Benedict, Bennink, Bliss, Bohnett, Brown, Butler, Cattell, Chandler, Clark, Cogswell, Crosby, Denegri, Farwell, Feeley, Fitzgerald, Gaylord, Gerdes, Griffin of Modesto, Guill, Hall, Hamilton, Harlan, Hayes, Held, Hewitt, Hinkle, Hinshaw, Jones, Joel, Judson, Kehoe, Kennedy, Lamb, Lynch, Lyon of Los Angeles, Lyon of San Francisco, Maher, Malone, March, McDonald, McGowen, Mott, Nolan, Preisker, Randall,

Amendments bearing upon the work of the State Railroad Commission is known as Senate Constitutional Amendment No. 47.

The change which this amendment makes in the State Constitution authorizes the Legislature to place under the jurisdiction of the State Railroad Commission every conceivable kind of public service except that furnished by municipality-owned plants. Once the Legislature confers powers upon the commission, all similar powers theretofore vested in the several counties of the State shall cease. The same is true of municipalities, except in such cases as a municipality may, by majority vote, decide to retain particular powers of regulation of public utilities now vested in them.[181]

Rimlinger, Rodgers of San Francisco, Rogers of Alameda, Rosendale, Rutherford, Sbragia, Smith, Stevenot, Stuckenbruck, Sutherland, Tibbits, Walker, Williams, Wilson, Wyllie, Young—63.

Against the amendment—Bishop, Freeman, Jasper, Mendenhall, Mullally, Polsley—6.

In the Senate:

For the amendment—Avey, Beban, Bell, Bills, Birdsall, Black, Boynton, Bryant, Burnett, Caminetti, Campbell, Cartwright, Cassidy, Curtin, Cutten, Finn, Gates, Hewitt, Holohan, Juilliard, Lewis, Regan, Roseberry, Rush, Stetson, Strobridge, Thompson, Tyrrell, Walker, Welch, Wright—31.

Against the amendment—Hurd, Larkins, Martinelli, Sanford, Shanahan, Wolfe—6.

181 The vote by which S. C. A. No. 47 was submitted to the people was as follows:

In the Senate:

For the amendment—Avey, Beban, Bell, Bills, Boynton, Bryant, Burnett, Caminetti, Campbell, Cartwright, Cassidy, Cutten, Estudillo, Finn, Gates, Hans, Hewitt, Holohan, Hurd, Larkins, Martinelli, Regan, Roseberry, Sanford, Shanahan, Strobridge, Thompson, Walker, Welch and Wolfe—30.

Against the amendment—Wright—1.

In the Assembly:

For the amendment—Beatty, Beckett, Benedict, Bennink, Bohnett, Brown, Butler, Cattell, Chandler, Clark, Coghlan, Cogswell, Cronin, Denegri, Farwell, Fitzgerald, Flint, Freeman, Gaylord, Gerdes, Griffin of Modesto, Griffiths, Guill, Hall, Hamilton, Hayes, Held, Hewitt, Hinkle, Hinshaw, Jasper, Jones, Joel, Judson, Lamb, Lynch, Lyon of Los Angeles, Lyon of San Francisco, Malone, McGowen, Mendenhall, Preisker, Randall, Rodgers of San Francisco, Rogers of Alameda, Rosendale, Rutherford, Smith, Stevenot, Stuckenbruck, Sutherland, Telfer, Tibbits, Walker, Williams, Young—56.

Against the amendment—Polsley—1.

CHAPTER XII.

THE CONSERVATION MEASURES.

Definite Provisions Made for Listing the State's Natural Resources and for Regulating Their Use—Character of Opposition at Previous Sessions.

The so-called "Conservation" bills which were considered at the 1911 session of the Legislature, dealt with conditions that were unknown when the State Constitution was adopted in 1879.

These conditions result generally from the passage of natural resources under private control, but find their most important expression in the utilization of the falling waters of California streams for power purposes. It was with this feature that the 1911 Legislature dealt principally.

When long-distance transmission of electric power had been made practical, the falling waters at once became enormously valuable.[182] This value was due to an

182 Former Governor George C. Pardee stated before the National Education Association, that the power which could be developed from these falling waters, would equal the labor of 65,000,000 men.

"In California alone," said Governor Pardee, "the streams are, it is estimated, capable of generating 5,000,000 horsepower of electrical energy. The work of one horsepower of electrical energy is estimated to be equivalent to the labor of thirteen men. California's 5,000,000 water horsepower, therefore, represent the labor of 65,000,000 toiling men; and the 30,000,000 horsepower used in the United States to-day accomplish the work of 390,000,000 men.

"He who controls, then, the water powers of this country will be, in effect, the owner of an army of slaves over four times

application of electric power transmission, theretofore unheard of.

As the conditions thus suddenly brought about were entirely new, no provision to meet them had been made in the laws of the State. Indeed, Legislature after Legislature had failed to take any step toward regulating or restricting such appropriation. [There was not, up to the 1911 session, any comprehensive law on California statute books for the disposition of this water wealth. Under the system of appropriation followed, any person wishing to take water from a stream, or to use such water, posted, a notice of the amount he proposed to take, and took it.[183]]

With the development of electric power transmission, water power worth hundreds of millions of dollars, its value little understood, was lying unprotected by law, at the mercy of the first to appropriate it.

This wealth, until it passed into private hands, belonged to all The People of the State. Those interested in grabbing it, kept knowledge of the situation from the public, so far as possible, and sent agents to Sacramento

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greater in number than the 90,000,000 men, women and children now within the borders of this Union.

"Who shall own that army, direct the energies of that enormous power, and levy toll upon those who use the products of its labor? Shall it be a very few of our people. Shall that toll, its size set by those few, be collected from every American citizen by those whose natural and very human desire it will be to collect 'all the traffic will bear'? Give me a monopoly of a Nation's power plants and I will not care whose foot rocks its cradles, who writes its songs or makes its laws. The cradles and the songs will not interest me at all; and as for the laws, I will write myself all of them in which I have any interest, until some kind of a revolution unseats me from the throne."

183 This loose system promises to make trouble later on. It is said that in the case of many of the streams from ten to twenty-five times the amount of water which the streams carry has been "appropriated." Without regulation of appropriation such a result was inevitable.

to prevent any legislation which would tend to protect the public's interests.

Nevertheless, as early as 1903, a bill to regulate the appropriation of water was introduced. Its passage was, however, prevented. A similar measure was introduced at the 1905 session, only to meet defeat.

At the 1907 session, hopelessly dominated by the machine, no such measure was introduced, and probably none would have been at the 1909 session, had it not been for an attempt made by the special interests intent upon securing the water wealth of the State, to involve the State in active opposition to the Federal Government's conservation policies.

In carrying out these policies, the Federal Government had, in a way, been able to protect the rights of The People of California to their water power. This could be done, however, only in the case of water flowing through Government lands.

Under the law, the Government lands within the borders of the State are held by the Federal Government, not for the use of The People of California alone, but for the use of The People of the entire nation. On the other hand, the physical water of the streams within the boundaries of the State, is State property, to be conserved or dissipated by the State. Directly, the Government could do nothing for the conservation of these waters, but indirectly the Government could do much. This was done through the Government's control of the Forest Reserve.

Many of the most valuable water rights that have fallen into private hands are within Government Forest Reserves. The Federal Government could not regulate

the appropriation and taking of these waters, but it could prescribe rules for the use of the Forest Reserve from which the water was taken. This was done. In this way the Government could in a measure conserve the State's water wealth until The People of California awoke to the necessity for its protection.

[This policy of the Federal Government interfered materially with the purposes of the private interests that were intent upon securing the water rights away from The People. At the 1909 session, therefore, a concurrent resolution[184] was introduced, which in effect directed the State Attorney General to defend against the Federal Government, the special interests engaged in securing water rights in Forest Reserves.]

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184 Senate Concurrent Resolution No. 7, Session of 1909. The Resolution in full was as follows:

"Whereas, It has come to the notice of the Legislature, that citizens of this State, engaged in lawful occupations, using, in conformity with the provisions of the State Constitution and statutes made thereunder, property and property rights owned by the State and by the people of the State, have been interfered with in said use by persons, who, declaring themselves to be officials of the United States, have asserted, and by duress have exercised, rights of regulation of use, and of taxation of use, of said properties of the State while being lawfully used by its citizens; and,

"Whereas, The provision of the Constitution and statutes of this State, under and by virtue of which its citizens make use of their common property aforesaid, are not inconsistent with the Act of admission of the State into the United States, nor inconsistent with any other act or acts of Congress.

"Resolved, By the Senate and the Assembly concurring, that the Attorney-General of this State be and is hereby authorized, empowered and directed to appear in behalf of the State in any action or actions brought by the United States against the citizens of this State, to collect taxes from them for their use of property and property rights owned by the State or the people thereof, or to maintain any authority or right of regulation of use by citizens of this State of property and of property rights owned by the State or by the people thereof; and that the Attorney-General is further directed by proper legal proceeding to assert and maintain the right and title of the State to its said properties, and to assert and maintain the right of citizens of the State to use said properties free of interference from persons claiming to be officials of the United States and thereby to be authorized and empowered to make such interference."

The purpose of this resolution was exposed by the Sacramento Bee.

When its author, Senator E. S. Birdsall of Auburn, who had introduced it "by request," understood its purport, he withdrew his support, and the resolution was left in the Judiciary Committee to which it had been referred.

The discussion caused by the introduction of this resolution brought prominently before the Legislature the necessity for proper regulation of the appropriation and use of the State's water wealth.

Senator Marshall Black of Palo Alto accordingly introduced a bill[185] providing for such regulation. The

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185 Senate Bill 1063, Session of 1909.

The measure declared all water flowing in known or defined channels, whether below or above ground, to be the property of the State. The water which percolates through the soil was declared to be the property of the person owning the soil through which it percolates.

Riparian rights in the waters of the streams were limited to the amount of water necessary for the beneficial uses of the riparian owners. This water could be used only to a reasonable extent and consistent with the equal use thereof by all others entitled to use the water. The surplus was required to be turned back into the stream.

Subject to vested right therein the waters of any stream could be appropriated under the provisions of the Act for any beneficial public or private use, but only in the manner in which the measure provided.

For carrying out the purposes of the measure, a board of four engineers was provided.

A person or corporation wishing to appropriate water was required to file an application with the Board of Engineers setting forth the quantity of water desired, the stream and the point thereof from which it was to be taken, and the purposes for which it was to be used. The engineers after due publication were required to grant or reject the petition in conformity with the regulations provided in the Act.

The engineers were not permitted to authorize the construction of works for the diversion of any water the capacity of which was in excess of the surplus unappropriated water in any stream nor could any permit granted affect or in any way interfere with previously vested rights.

The permit had to show the amount of water authorized to be appropriated, for what purposes, the place of use, the means by which the diversion and application of the water was to be made, and the time within which the works for the diversion and application thereof shall be completed, not exceeding a reasonable period to be fixed by the Board.

Violations of the provisions of the Act were made misdemeanors.

Black bill never got beyond the Senate Committee on Irrigation to which it was referred.

But the publicity given the Black bill unquestionably had much to do with arousing the public to the necessity for such legislation. The 1910 State conventions of both the Democratic and the Republican party declared for conservation of the State's water wealth. The Republican State Central Committee appointed a special committee [186] to draw measures to that end. Conservation was strongly urged in Governor's Johnson's inaugural address.[187]

As a result of all these influences, at the 1911 session, the so-called conservation bills took high place as "administration measures."

These measures were drawn by the Conservation Committee appointed by the Republican State Central Committee, of which Governor Pardee was chairman and Milton T. U'Ren, secretary. The bills were, however, worked over by several legislative committees, numerous amendments being adopted. But the changes were all in line with the work of the Conservation Committee, and in many instances were suggested by Chairman Pardee and his associates.

Governor, Legislators and committeemen thus united to provide for California what the State had not had before, effective conservation legislation. The field was new; the work—to meet heretofore unknown conditions

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186 The committee consisted of Former Governor George C. Pardee, chairman; Francis J. Heney, Wm. Kent, Chester H. Rowell, S. C. Graham, Marshall Black, Assemblyman-elect W. C. Clark, L. L. Dennett, Harold T. Power, Ralph Bull, Francis Cuttle and Milton T. U'Ren.

187 See Governor Johnson's inaugural address in the appendix.

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—unprecedented; those in charge of the bills had to grope their way. But they had two ends in view:

(1) To provide the means for learning what natural resources there are in California subject to State control.

(2) To keep these natural resources from being monopolized and exploited, and thereby made the means of extorting unreasonable returns from The People.

To achieve these ends three measures were introduced, Assemblyman Clark having charge of them in the Lower House, and Senator Black in the upper.

The measures were Assembly Bills 789, 735 and 788. I give them in the order of their importance. There was, of course, more or less opposition to the bills. It cropped up in the matter of making sufficient appropriations to insure effective work; it came in the joint meeting of the Senate Committee on Irrigation and the Assembly Committee on Conservation, held expressly to discuss these bills, on the evening of February 7. But Francis J. Heney,[188] Governor Pardee, Chester H. Rowell, Congressman William Kent, and others keenly alive to the necessity of holding the State's resources for development, and preventing their sacrifice by exploitation, were constantly on the alert, and the effectiveness of the measures was not materially impaired.

And while on this phase of the work, it is not out of place to say that the lobbyists who opposed the bills were no doubt generously paid for their services. But the citizens who were at Sacramento to urge the measures'

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188 Mr. Heney's plea for conservation that night, was declared to be the most exhaustive of the subject, and the most effective of all the speeches made before the Legislature or Committees of the Legislature during the session.

passage, not only received nothing for their work, but paid their own expenses.

The most important of the conservation bills, Assembly Bill 789, provided for a commission to list the natural resources of the State, to ascertain what other States are doing in the way of conservation, and to determine the best methods of conserving these resources to The People.

The members of this commission will receive no salary. Those who accept the commissionerships will serve, precisely as did those who went to Sacramento in the interest of the bill, for the well-being of their State alone.

The necessity for this act is apparent. The exploiters of the State's natural resources have, at enormous expense, gathered much data of the State's natural resources. But the State has no data on the subject in such shape that it can be used effectively.

In coping with the exploiters, it is necessary that the State have information to enable its representatives to act intelligently. Such information the Conservation Commission is under the terms of Assembly Bill 789 charged with gathering.

The commission is authorized to provide for surveys and such other work as may be deemed necessary.

To enable the commission to carry on this work, $100,000 is appropriated. So important was this work deemed by the Legislature that the appropriation asked for was not cut down by either the Ways and Means Committee of the Assembly or the Finance Committee of the Senate.

Not a negative vote was cast against the bill in the Senate, and only one in the Assembly.[189]

The bill that was thus passed by practically unanimous vote, dealt with the problem of permanent conservation by providing means for comprehensive work covering the entire field of the State's natural resources, that eventually proper and accurate regulations and restrictions may be secured by legislation.

But the Legislature was confronted with an immediate emergency, namely the conservation of the State's water power. Much of this power had already passed into private hands. Unless the 1911 Legislature should pass measures for the conservation of such power as remained unappropriated, it was pointed out,[190] there would not, by the time the next Legislature convened, be any unappropriated water power left in California to be conserved.

To meet this emergency condition, Assembly Bill 735 was prepared.

The chief purpose of this measure was to prevent

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189 That of Assemblyman Polsley. Twenty-seven Senators voted for the measure and 50 Assemblymen.

190 This was most effectively done by Chester H. Rowell of Fresno, before the joint meeting of Senate and Assembly committees, held on the evening of February 7.

Mr. Rowell showed conclusively that in California we have permanent necessity for conservation, but of more immediate importance was emergency legislation to save such water power as has not as yet been filed upon. Much of the water power of the State, Mr. Rowell pointed out, has been grabbed; the rest is being grabbed. To conserve for the people of the State the ungrabbed power, it was imperative that the Legislature pass laws prescribing under what conditions individuals may acquire this power. Unless such legislation be secured at the 1911 session, Rowell contended, there would be no water power left to conserve by the time the 1913 Legislature convened, for it would all be grabbed.

The question of making a general inventory of the resources of the State, and the problem of conserving them, can wait, Rowell stated, but the conservation of the water power of the State cannot wait.

further appropriation of water in perpetuity for the generation of electrical power.[191]

To this end, under the terms of the bill, a commission is created, to consist of the Governor, the State Engineer, and three commissioners to be appointed by the Governor.

Persons wishing to appropriate water for electrical power purposes are required to make application to this commission. The commission has discretion to grant or to refuse such application. But in no case can the license cover a period longer than twenty-five years.

The licensee, however, may, at the expiration of the license, secure a further license, at the discretion of the commission, for an additional period not to exceed twenty-five years.[192]

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191 Exception from this provision is made in the case of municipal corporations and irrigation districts where the power is distributed within its own limits and used for purposes subsidiary to irrigation. Exception is also made in the case of lighting districts where the electricity is distributed within its own limits.

192 The principal opposition was directed to this twenty-five-years limit. The opponents wanted the term made forty years. The friction between the two factions had full play at the joint meeting of the Senate and Assembly committees, Feb. 7, held to consider the conservation bills, and found its best expression in a clash of wit between Governor Pardee and Senator Lewis of Stockton.

"Why," began Lewis, "do you limit the granting of water power to a term of twenty-five years?"

"Because," replied Pardee, "capital can and will, and does, profitably invest in such enterprises on the twenty-five-year basis. Twenty years would be better."

Lewis cited a case in which a corporation had not paid dividends in thirty-five years.

"Then," declared Dr. Pardee, "I would say that such a financial enterprise was moribund, and ought to be buried."

"Is it not true," asked Lewis, "that doctors bury many live patients?"

"Yes," came back the doctor, "and expect to bury many more."

"Don't you know," suggested Lewis, "there is a law before this Legislature to put doctors out of business?"

"The doctors," replied Pardee, "can stand it if the patients can."

Then Pardee continued seriously, stating that the people cannot take care of all the financial lame ducks by legislation, but must consider their own interests.

"But how about our infant industries?" insisted Lewis. "Capital must be encouraged to invest in our power sites."

"Infant industries," replied Pardee, "that continue infants for twenty-five years are scarcely worth while."

The measure also provides for a nominal charge for the use of the water, the purpose being to establish the right and policy of the State to make such charge.

The State further reserves the right to fix fees and charges hereafter, and makes the same applicable to all the water appropriated under the act hereafter. The attempt is also made to subject appropriations of water, heretofore made, to such charges.

When Assembly Bill 735 finally came to vote, not a member went on record against it. Twenty-five Senators voted for it and fifty-four Assemblymen.

Nevertheless, there was much covered opposition to the provision which limited the term of grants of power rights to twenty-five years.

The opposition found more or less open expression when the companion measure, Assembly Bill 788, came to vote in the Senate.

This measure was of itself comparatively unimportant. Its purpose was to amend Section 1410 of the Civil Code to conform with the provisions of Assembly Bill 735 in the matter of limiting the appropriation of water for the purposes therein set forth to a term of twenty-five years.

The bill passed the Assembly without a vote being cast against it, sixty-one Assemblymen voting in the affirmative.[193] This was on March 8. The measure did not

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193 The Assembly vote on Assembly Bill 788 was:

For the bill—Beatty, Beckett, Benedict, Bennink, Bishop, Bohnett, Brown, Butler, Callaghan, Cattell, Chandler, Clark, Cogswell, Denegri, Farwell, Fitzgerald, Flint, Freeman, Gerdes, Griffin of Modesto, Hall, Harlan, Hayes, Held, Hewitt, Hinkle, Hinshaw, Jasper, Joel, Judson, Kehoe, Kennedy, Lamb, Lyon of Los Angeles, Lyon of San Francisco, Malone, March, McDonald, McGowen, Mendenhall, Mott, Mullally, Nolan, Polsley, Preisker, Rimlinger, Rodgers

come to a vote in the Senate, however, until March 23, the Thursday before adjournment. Then, on its final passage, Senator Curtin moved to amend to make the term forty instead of twenty-five years.

The fight which ensued between the two factions was heated while it lasted. At Curtin's request, the Senate doors were locked, and absentee members were brought in by the sergeant-at-arms. In this way the attendance of thirty-nine of the forty Senators was secured.

A scene of great confusion followed. Senator John J. Cassidy of San Francisco, connected with the United Railroads, the traction monopoly of that city, was active in the attempt to have the proposed amendment adopted. Senator Finn, also of San Francisco, voted first against the proposed amendment, and then for it. Senator Beban, another San Francisco member, did the same.

But in spite of these efforts, the amendment was defeated by a vote of 17 to 20[194] This was the test vote in the Senate on conservation.

After the defeat of the Curtin amendment, the bill was passed by a vote of 31 to 0.[195]

Principally because of the opposition to limiting the

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of San Francisco, Rogers of Alameda, Rosendale, Rutherford, Sbragia, Slater, Smith, Sutherland, Telfer, Tibbits, Walker, Williams, Wilson, Wyllie, Young—61.

Against the bill—None.

194 The vote on Curtin's amendment was as follows:

For the amendment—Avey, Beban, Bills, Boynton, Caminetti, Cassidy, Curtin, Finn, Hans, Juilliard, Larkins, Martinelli, Roseberry, Stetson, Strobridge, Wolfe and Wright—17.

Against the amendment—Bell, Birdsall, Black, Bryant, Burnett, Cutten, Estudillo, Gates, Hare, Hewitt, Holohan, Hurd, Lewis, Regan, Rush, Sanford, Shanahan, Thompson, Tyrrell and Walker—20.

195 The vote by which Assembly Bill 788 passed the Senate was as follows:

For the bill—Avey, Beban, Bell, Bills, Birdsall, Black, Boynton, Bryant, Burnett, Caminetti, Campbell, Cassidy, Cutten, Finn, Gates,

grants of water-power rights to twenty-five-years terms, the Conservation amendment (Assembly Amendment No. 23) was withdrawn by its author, Assemblyman Clark of Oakland.

This amendment declared all water within the State of California to be the property of The People of the State; declared the use of all water now appropriated, or that may be hereafter appropriated, was to be a public use and subject to the regulation and control of the State in the manner prescribed by law; limited the grants of such water to twenty-five years.

For the adoption of this amendment by the Senate, twenty-seven votes in that body were required. It is very doubtful if that number of Senators would have voted for it. Assemblyman Clark, because of such opposition and difference of opinion on the details of the amendment that developed among the Progressives themselves, finally withdrew the measure.

But this conservation amendment merely becomes part of the left-over work of the 1911 session, for the 1913 session to complete. With information on the State's natural resources which was not available in 1911, the 1913 Legislature will be able to act upon this, or a similar amendment, intelligently.[196]

Hans, Hewitt, Holohan, Hurd, Juilliard, Lewis, Martinelli, Roseberry, Rush, Shanahan, Stetson, Strobridge, Thompson, Walker, Wolfe, and Wright—31.

Against the bill—None.

[196] In addition to these principal conservation measures, a number of minor conservation bills dealing with conditions at Owen's Lake and for conservation of the flow of artesian water were introduced and became laws.

CHAPTER XIII.

Moral Issues.

Anti-Prize Fight Bill and Measures to Prevent the Exploitation of the Social Evil Defeated—Anti-Slot Machine Law Enacted.

When, in the latter part of Janauary, 1911, Tom Williams, the race track man, appeared at Sacramento to do his part in opposing the passage of the Walker-Young Anti-Racetrack Gambling bill, Buell [197] made the incident subject of one of his striking cartoons. The cartoon appeared in the Sacramento Bee of January 24. It was in two parts. The first pictured the arrival of Williams at Sacramento in 1909; the second, Mr. Williams' arrival in 1911.

The 1909 picture showed Williams surrounded by his enthusiastic supporters and admirers, in a sort of I-own-the-earth pose.

The other showed Williams' arrival in 1911, the backs of the crowd upon him, and only former Senator Frank Leavitt and Senator Eddie Wolfe to greet him. Wolfe was pictured as guiding Williams about, and Leavitt as bringing up the rear.

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197 H. V. Buell's cartoons were one of the features of the 1911 session. Unlike many cartoonists, Buell does not flatter rogues to keep his pension. No pleasing presentation of knaves in high places for him. His cartoons mean something. The Buell cartoons suggested by the fight for a practical Local Option law, had much to do with the passage of that measure.

The assurance shown in the first half of the cartoon was gone from Mr. Williams. He was pictured as saying, "It's chilly here."

And it was chilly at Sacramento in 1911 for any who opposed Anti-Racetrack Gambling measures, as chilly as it had been four years before for those who advocated the passage of such measures.[198] Columns of description could not have given a better idea of the changed order at Sacramento than this Buell cartoon. The changed order had brought to Sacramento very different faces than had appeared at other sessions.

At former sessions the writer has, while the House was in session, seen prostitutes in the chairs in the Senate and Assembly chambers back of the desks of the members, who sat there for hours, arrogantly assured of their position. But nothing of this character occurred at the 1911 session. The floor was kept cleared of objectionable characters—male as well as female.

There was little or no drunkenness. Even at the hotels and cafés at meal time it was the exception to see intoxicants on the tables.[199] The noisy meal-time gather-

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198 Up to two years ago so effective was the machine's opposition to anti-racetrack gambling legislation that when in 1907 the present Railroad Commissioner, John Eshleman, then an Assemblyman, had the temerity to introduce and support an anti-racetrack gambling bill, representatives of racetrack gambling in the Senate intimated to him that unless he ceased his activities against them, his bills would be held up. And at that session only one bill introduced by Mr. Eshleman was permitted to pass.

Eshleman was from Berkeley, and in the natural order of things would have handled the University appropriation bills. But because of Eshleman's attitude on racetrack gambling, and the firmness of his determination to stand by his anti-racetrack gambling bill, the University bills were taken out of his hands lest the firmly entrenched gambling interests in the Legislature, in retaliation, defeat the University appropriations.

199 Senator Bell of Pasadena has an ingenious explanation for the absence of drunkenness at the 1911 session. Formerly, the only meeting places for strangers in Sacramento were the lobbies

ings which have been characteristic of other sessions were entirely lacking.

The Legislature was prepared to pass as stringent an Anti-Racetrack Gambling law as those charged with its enforcement might ask. The passage of a Local Option law was accomplished with greater difficulty. But an effective Local Option law in the end went on the statute books. This was followed by the passage of an anti-slot machine law, which not only outlawed slot machines, but dice devices which were intended to take the place of slot machines. And, in addition, the way was opened for effective legislation to reach the exploiters of the social evil, who are becoming a powerful factor in the government of our large cities.

In the matter of anti-prize fight legislation, the proponents and opponents carried on a contest from the opening of the session until the gavels fell, without either side making headway.

Finn introduced a bill [200] in the Senate, the passage of which would have made it difficult if not impossible for the Governor to interfere with prize fighting in future, as Governor Gillett had done in the Jeffries-Johnson affair. But Finn's bill, although favorably reported by

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of the several hotels. These lobbies are small, but the bar-rooms of the establishments are comparatively large, and of easy access from the lobbies. The bar-rooms were in effect, from necessity, the meeting places.

But after the 1909 session, the Sacramento Hotel was completed. The feature of this hotel is its lobby. The bar-room, instead of being easy of access, is on another floor. The Sacramento Hotel lobby soon became the meeting place of members of the Legislature, and those who had business with the members. Visits to the bar-room were the rare exception.

200 Senate Bill 160.

the Senate Committee on Military Affairs, never got beyond the Senate.

On the other hand, the anti-Prize Fight bill met defeat in the Assembly Committee on Public Morals.

The measure which had the support of the opponents of prize fighting was introduced by Hinshaw of Los Angeles.

Hinshaw was not on the Public Morals Committee. But Sbragia was, as was Rogers of Alameda.

Both these gentlemen introduced anti-Prize Fight bills.

It soon became evident to the proponents of anti-Prize Fight legislation that the only way to get an anti-Prize Fight measure reported out of the Public Morals Committee was to accept features of the Sbragia and the Rogers bills. This was not deemed satisfactory. A deadlock ensued which lasted until March 26, the day before adjournment, when all three of the anti-Prize Fight measures were reported out of the committee without recommendation. This meant their death on the files. None of them ever came to vote.

The proponents of anti-Prize Fight legislation made the serious mistake of not introducing their measure in the Senate as well as in the Assembly, and making a fight for it in both houses. Not a measure of this kind has become a law without a fight, and a hard and bitter fight at that. The promoters engaged in the exploitation of the sports have enormous gains at stake and will stop at nothing to hold them. This was the experience in the fight for legislation to prevent the prostitution of horse racing. Effective anti-Prize Fight legislation will come only after a similar contest.

Another measure which may be regarded as an opening wedge to compel most desirable legislation was the Wyllie bill, which in effect outlawed property used in the promotion of prostitution.[201]

The measure was by no means an innovation. A law containing all the features of the Wyllie bill is on the Iowa statute books, and is endorsed by Iowa officials as practicable and workable.[202] The bill had the endorsement and support of men of the type of Guy Eddie, City Prosecutor of Los Angeles.

Mr. Eddie made a trip from Los Angeles to urge before the Assembly Public Morals Committee, to which the measure had been referred, that favorable action be taken on the measure.

Chief of Police Sebastian of Los Angeles, in a letter to Police Commissioner John Topham of that city, held that the abolishment of the red light district in Los Angeles had proved most satisfactory and made it easier for the police to deal with the problem.[203] Sebastian's letter was read before the committee.

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201 Assembly Bill 1014, an act to enjoin and abate houses of lewdness, assignation and prostitution, to declare the same to be nuisances, to enjoin the person or persons who conduct or maintain the same, and the owner or agent of any building used for such purposes.

202 Former Attorney-General of Iowa, H. W. Beyers, telegraphed Assemblyman Wyllie regarding the Iowa law as follows:

"Iowa's red light injunction law most effective measure for dealing with social evil ever enacted. Under it, the business is rapidly disappearing, without injustice to a single property holder."

203 Chief Sebastian's letter was as follows:

"Mr. John Topham, "Los Angeles, Cal., 2-25-11.
"Police Commissioner, Los Angeles.
"Dear Sir:

"Regarding a comparison of crime conditions and prostitution, existing when we had a 'District' and now, I beg to state, it will take a few days to compile this data, meanwhile I give in substance my opinion.

"It is necessary now to make many arrests of prostitutes where

Dr. David Starr Jordan, President of Stanford University,[204] wrote, strongly urging such legislation.

In view of this support of earnest men, who have approached the problem as students, public prosecutors

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actual proof of money passing, etc., is necessary to convict, whereas if the laws were amended as they should be, so that we could arrest for mere soliciting, the number of arrests would soon be less.

"But, conditions in general, as to prostitution are much better now than when we had a District, because the 'mack,' the white slave dealer, the 'cadet,' and the dealer in foreign prostitutes, and the leeches that follow and hang on about a District living off the earnings of prostitutes and their ilk, are all 'out of business' now.

"Los Angeles is, under this administration, much cleaner from prostitution and gambling and all other crimes of these natures, than it has ever been before in my knowledge of the city. With the proper co-operation from the District Attorney's office, we would soon have it the cleanest city in America.

"To the question, 'Does segregation segregate?' I will positively answer, 'It does not.'

"Respectfully,
"(Signed) C. E. SEBASTIAN,
"Chief of Police."

204 Dr. Jordan's statement, which was read before the Assembly Public Morals Committee, was in full as follows:

"LELAND STANFORD JR. UNIVERSITY.
"Office of the President.
"Stanford University, Cal.

"There is no more important matter to come before civilized nations than that of the absolute extermination of the red light districts of our cities. This is not a question of morals, primarily. It is that of self-protection of civilization itself. Practically every prostitute, the world over, male or female, is the victim of one or the other or both of two slow-maturing diseases caused by the presence of minute but deadly plants in the blood tissues. These maladies constitute the Red Plague, terrible to men, horrible beyond suggestion to women and children. The vilest of these two diseases may be communicated through towels, drinking cups and the like to people wholly innocent. With the one, children may be infected at birth. The other is the chief cause of blindness, of sterility, and of many other ills.

"It is necessary to have these maladies treated as other infectious diseases are treated, those suffering from them to be segregated and sent to hospitals for such cure or palliation as medical science may find possible. Medical inspection of houses of ill-fame is a dangerous farce. It seems to give a guaranty of immunity when no immunity exists. Such inspection can detect superficial symptoms only and to trust to it is to license the destruction of new victims. The great and unanswerable argument against the saloon as we now know it, is its alliance with the social evil, the fact that it is the open door to the red light district.

"Thus far the only safety in dealing with the plague is to abolish the plague spots, to destroy the centers of infection. To deal with the Red Plague we must destroy the houses of prostitution and send their inmates to the hospital. To abolish these houses, the only sure way is to attack their owners. To punish the in-

and police executives, the statement that the Wyllie bill was a "crank measure" does not hold good.

The Public Morals Committee apparently held to this view, for after several hearings, at which representative men from all parts of the State appeared to urge its passage, the committee referred the measure back to the Assembly with the recommendation that it do pass.

In the Assembly the measure was amended on second reading, which necessitated its being reprinted.

This resulted in delay. On March 16 the bill had not been brought to final vote. On that day, Assemblyman George Fitzgerald of Alameda moved that the bill be re-referred to the Judiciary Committee. The motion prevailed.

Wyllie, author of the bill, protested that the chair had not recognized him to speak on the motion, but the ruling was made that the point was not well taken.

Speaker pro tem. Cattell was in the chair. The incident led to some excitement. Wyllie appealed from the decision, but lost again, the Assembly sustaining the Speaker. The measure went to the Judiciary Committee.

At the late date on which this action was taken, this

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mates serves no purpose. These live in eternal torment already. It is understood that the present Iowa law against houses of ill-fame, whereby the owner of such house is held immediately and rigidly responsible, has proved effective. If so, the sooner we have it in California and everywhere else throughout the United States the better. Surely the decent people, not engaged in the white slave traffic, the men who love their wives and children and who would protect them from the vilest of diseases, far outnumber those who are making money out of crime. Every move toward the suppression of the Red Plague makes the world better and safer for every man and woman. The whole moral strength of California should be on the side of every efficient measure working towards making this a clean State.

"Very truly yours,
"(Signed) DAVID S. JORDAN.
C."

"Dictated. Signed in Dr. Jordan's absence."

meant the defeat of the bill. Wyllie's red-light district measure was not heard from again.[205]

Another measure, Assembly Constitutional Amendment No. 13, striking at the same evil, was introduced in the lower House by Assemblyman Polsley. This proposed amendment[206] prohibited the employment of women in any saloon or other place where intoxicating liquors or intoxicating drugs are sold. Although a majority of the Assembly voted for the amendment, it failed to receive the fifty-four votes necessary for its submission to the people. It was defeated by a vote of 46 to 28.

The defeat of such measures as the Wyllie bill and

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205 The persistency and care with which such measures are watched by the exploiters of prostitution is scarcely believable.

At the last session, for example, Assemblyman Polsley introduced a measure to regulate the dance hall evil. Within twenty-four hours he had been visited by a State Senator and an Assemblyman—both from San Francisco—and urged to withdraw the measure. He refused. He would not even promise not to call the measure up during the absence of the Assemblyman. This last was serious for the San Francisco member. Lest Polsley call the bill up, the San Franciscan took care to be present when Polsley was in the Assembly Chamber. In this way Polsley was able to compel the San Franciscan's attendance much against that gentleman's inclination.

206 Assembly Constitutional Amendment No. 13 provided that: No person shall, on account of sex, be disqualified from entering upon, or pursuing any lawful business, vocation, or profession; provided, however, that the selling, or handling, by women, of intoxicating liquors, or the presence of woman in any capacity, or at all, in a saloon, hall, theatre, or other place where intoxicating liquors, or intoxicating drugs, are sold, drank, or given away, shall not be considered a lawful business, vocation, or profession, within the meaning of this section.

The amendment was defeated by the following vote:

For the Amendment—Beckett, Benedict, Bennink, Bishop, Bliss, Bohnett, Brown, Butler, Cattell, Chandler, Clark, Cogswell, Crosby, Farwell, Freeman, Griffin of Modesto, Guill, Hall, Hamilton, Harlan, Hewitt, Hinkle, Hinshaw, Jasper, Jones, Judson, Kehoe, Lamb, Lynch, Lyon of San Francisco, Malone, McGowen, Mendenhall, Mott, Preisker, Randall, Rutherford, Smith, Stuckenbruck, Sutherland, Telfer, Tibbits, Williams, Wilson, Wyllie, Young—46.

Against the Amendment—Beatty, Callaghan, Cronin, Cunningham, Denegri, Feeley, Fitzgerald, Flint, Gaylord, Gerdes, Hayes, Joel, Kennedy, Maher, March, McDonald, Mullally, Nolan, Polsley, Rimlinger, Rodgers of San Francisco, Rogers of Alameda, Rosendale, Sbragia, Schmitt, Slater, Stevenot and Walsh—28.

the Polsley amendment may be ascribed to three principal causes:

(1) The apathy of the General Public, due to ignorance of the extent and consequences of the evil aimed at.[207]

(2) The enormous gains of the exploiters of the social evil, which makes it worth their while to cloud the issue by inspired newspaper articles, and in other ways to go to great pains and expense to defeat such legislation.[208]

(3) The inability of the average member of the Legislature, in the face of the enormous amount of work thrust upon him, to get at the bottom of this question, in which the public apparently takes little interest.

It is a question of racetrack gambling over again. For years the opponents of Racetrack Gambling legislation arrogantly controlled the Legislature at every point where measures affecting public morals could be heard.

But once the public was informed of the enormity of the evils of racetrack gambling, the exploiters of the race course went down to defeat.

Once the evils aimed at in the Wyllie bill and the Polsley amendment are understood, such measures can

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207 See Bulletin of the State Board of Health for May, 1910; and Report of Transactions of the San Francisco Commonwealth Club for May, 1911. The first of these documents may be had by addressing the State Board of Health at Sacramento, and the second by sending to the secretary of the Commonwealth Club, First National Bank Building, San Francisco.

208 Dr. Rosenstirn stated before the San Francisco Commonwealth Club that through exploiting the earnings of unfortunate women, some men have, he believed, a weekly income of from $2000 to $3000, from properties not worth more than $25,000 or $30,000. This is approximately 10 per cent. a week returns on the investment, more than 500 per cent. a year. The figures are probably conservative.

not be defeated. They would not, probably, have been defeated at the 1911 session had they been given the prominence their importance warranted.

Along the same line was a resolution introduced by Assemblyman Joel of San Francisco, calling for a legislative committee to investigate conditions in that city due to the alleged incompetence or corruption of the San Francisco Police Department.

If such a committee could be legally appointed, and be made up of men who are not financially interested, directly or indirectly, in the evils sought to be remedied, much good could be accomplished, not only for San Francisco but for the entire State. Joel's resolution, however, was not adopted.

The opponents of anti-Slot Machine legislation found themselves at the 1911 session where the race-track gamblers found themselves in 1909, and where the exploiters of the social evil must sooner or later find themselves. The Public, long oblivious to the slot-machine evils, was at last aroused to the menace. In addition to this the cold-blooded dishonesty of the devices was established beyond the shadow of a doubt.

The anti-Slot Machine bill was introduced in the Assembly by Kennedy of San Francisco.

The charge was made that the opponents of the measure had raised $5000 to defeat it. But however this may be, the bill passed the Assembly by a vote of 51 to 6.[209]

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[209] The vote by which the Anti-Slot Machine bill passed the Assembly was as follows:

For the bill—Beckett, Benedict, Binnink, Bliss, Bohnett, Brown, Butler, Callaghan, Chandler, Clark, Cronin, Crosby, Farwell, Fitzgerald, Flint, Freeman, Gaylord, Griffin of Modesto, Guill, Hamilton,

Rumors reached the capital that if the measure became a law, dice devices would be substituted for slot machines. The bill was accordingly amended to include dice devices.

When the measure came to vote in the Senate, Senator Bell read from advertising pamphlets sent out by the Mills Novelty Company of Chicago and by the Caille Brothers Company of Detroit. These companies are manufacturers of slot machines. The advertisements showed to those interested in operating slot machines how easily the machines could be "fixed" to return as much or as little to the player as the owner or lessee saw fit.[210]

The reading of these advertisements created a de-

Held, Hewitt, Hinkle, Hinshaw, Jasper, Jones, Judson, Kehoe, Kennedy, Lamb, Lynch, Lyon of Los Angeles, Lyon of San Francisco, Malone, Mendenhall, Mott, Polsley, Preisker, Randall, Rogers of Alameda, Rosendale, Rutherford, Slater, Smith, Stevenot, Telfer, Tibbits, Williams, Wilson, Wyllie, Young—51.

Against the bill—Cunningham, Feeley, Mullally, Nolan, Rimlinger and Sbragia—6.

210 Some of the quotations from the pamphlets are worth preserving. The following are fair examples:

From pamphlet headed "Instructions for the Dewey and Chicago Machines," issued by the Mills Novelty Company, only manufacturers of the original and genuine Mills Coin Operating Machines, 11-23 South Jefferson Street, Chicago, Ill. "To Increase Percentage—Bring plugs No. 115 B to an erect position on wheel No. 115, using hook or finger to bring them into position. Fasten plug by using screw found in small envelope marked 'Plug Screws.' Figures on wheel indicate amount of prize and location of plugs. In order to turn wheel No. 115, when this is being done, hold up on rod No. 96 and pull handle down to about one inch from handle stop on front of case."

From catalog 509, The Caille Brothers Company, Inc., Detroit, Mich., the catalog being labeled "Caille automatic money-paying machine and trade stimulating machines:"

Page 5. "Don't overlook the Special automatic percentage device embodied in the Eclipse. It's a winner. It makes the machine very 'liberal' or as 'strong' as desired."

Page 7. "The automatic percentage arrangement of the Eclipse makes this combination appeal to many. When 'two-for-one' colors are played, any of the big colors are all open, but plug themselves automatically when played. It's a convincing argument."

Page 11. "The plugging or percentage system is operated by simply turning a lever. Open, it will 'rake off' 25 per cent., and closed, it will 'rake off' 50 per cent. Cabinet of quartered oak or

cided sensation in the Senate. None, after the exposure, had the courage to vote against the bill. The measure passed the Senate without a vote being cast against it.

The advertising pamphlets were destined to play a further part in the campaign against slot machines.

Having lost in the Legislature, the slot-machine people appealed to Governor Johnson to veto the bill.

Governor Johnson listened to them patiently.

When they had done, he handed them the Caille and the Mills Novelty Company's circulars.

"What have you to say to these circulars, gentlemen?" asked the Governor.

The gentlemen had nothing to say.

Governor Johnson signed the bill.

There has been more or less talk of a reaction in politics, and a return of the old "Machine" element to power. But this will not be if The People of California

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mahogany finish. Trimmings in nickel or oxidized. Large casters on legs."

Page 14. "Automatic Percentage Device on this machine is made so that when Red or Black is played all colors are open. When higher colors are played as many are automatically 'shut out' as desired. Can be just as liberal or just as strong as desired. 'Rake off' can be adjusted for from 10 per cent. to 70 per cent."

Page 15. "Has automatic percentage device. When red or black is played all colors are open. This automatic percentage arrangement is a very valuable feature and must be thoroughly understood to be appreciated. Can be set for 10 per cent. 'rake off' and all the way up to 75 per cent."

Page 18. "Everyone believed it could not be 'plugged,' whereas it actually has a percentage regulator of unique design that is only found on the 'Detroit' machine. The 'Piker' manufacturers had to devise an exposed paywheel and soon came out with a 'faked' affair controlled on the inside. They have all had to take a 'back seat' for the original."

"The paywheel of a Detroit actually stops dial and causes the pay-out works to operate. This principle is employed in all our machines where the exposed wheel is used."

Page 19. "The 'Puck' has an independent 'percentage' system so that any desired percentage can be had."

understand what such restoration will mean. We are prone to regard the "Machine" as responsible for industrial and political evils only. But on the side of moral evils alone, machine rule is a menace not only to the State, but to every home in the State.

At this point individuals of the machine divide. A study of legislative votes will show that some members are usually wrong on political and moral issues, and right on industrial questions. On the other hand, others are wrong on industrial questions and generally right on moral and political questions. The record of the machine, taken as a whole, shows it wrong on all questions, although certain legislators who usually vote with the machine on political and industrial questions, vote right on moral issues.

With such a situation, the machine needs but small margin to be able to manipulate and trade until good measures are defeated and bad measures are passed.

The restoration of the machine means amendment into ineffectiveness of remedial legislation for the correction of moral evils which have, during the last two years, gone on the statute books; it means prevention of the passage of laws for the correction of the social evil; it means the reappearance of prostitutes in Senate and Assembly chambers.

That The People of California will knowingly vote to restore such conditions is unthinkable.

CHAPTER XIV.

AMENDMENT OF ANTI-RACETRACK GAMBLING LAW.

The Walker-Otis Law of 1909 Was Amended to Meet Defects Which Were Developed by Decisions of the Courts in "Test Cases."

The Walker-Otis Anti-Racetrack Gambling bill passed at the 1909 session, in plain English prohibited racetrack gambling. The measure followed the New York Anti-Racetrack Gambling law, which Governor Hughes of that State supported so vigorously. It was not supposed that the criminal element by quibble or quirk could evade its provisions.

Nevertheless, on the inevitable "test case," the New York court held first—and the California courts, tagging along after, held later—that, under the Walker-Otis law:

1. Oral betting was permissible.

2. That a stake-holder not acting for gain, hire or reward does not violate that law.

3. The passing of wagered money and payment of bets after a race is won, and acceptance of bets by the winner, are not violations of the law under certaain circumstances.

4. That one portion of the act was inoperative in

view of its inconsistency with subsequent clauses of the act.[211]

Under this beneficent ruling, the gamblers perfected a most elaborate scheme for evading the law.

As "bookmaking" was prohibited by the Walker-Otis law, in language too plain even for "interpretation," the old-time bookmaker took unto himself the name of "layer."

As "layer" he would stand in the betting ring at the racetrack and hold up before the crowd a program of the day's races. On this program the "odds" on each horse were printed.

As persons in the crowd accepted these odds and made their "bet," the "layer" announced the initials of the bettor and the amount bet.

A little in front of the "layer" would stand a second man, known under the new system as the "stake-holder."

The duty of the "stake-holder" was to accept the money placed by the bettor. The stake-holder, in a tone of voice loud enough for the "layer" to hear would announce the amount bet.

Under the rulings of the courts the performance thus far was, under the Walker-Otis law, perfectly lawful, unless the "stake-holder" were "acting for gain," a thing difficult if not impossible to prove. But at this point came

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211 Under machine rule, the racetrack gamblers were powerful enough to safeguard their interests in the Legislature by securing the nomination and election of legislators in accord and sympathy with them. The Senate Committee on Public Morals was notoriously dominated by the gambling element. Under the same machine order, candidates for the bench were nominated and elected. The gamblers were given the same opportunity to name judges in sympathy with their purposes, as to nominate legislators. Those who know the character of the "sure-thing" gambler will scarcely hold that the gambling fraternity had the self-control and patriotism to resist the temptation to avail itself of this opportunity.

the necessity of recording the bet. The record was kept by a third man, who was under instructions to keep away from the "layer" and the "stake-holder." This third man was paid $10 a day for his services. It was his duty to record each bet. He did so by noting it on a tab concealed in his coat pocket, or on his cuff. At this point the system was weak, for every time the third man recorded a bet he violated the Walker-Otis law.

But the third man was not employed by the "layer"; oftentimes he could not have told who had employed him, even had he so desired. He only knew that he got ten dollars for his services. The compensation covered the risk of going to jail.

About a race track hundreds of men could be employed on this basis. The real criminals, the gamblers, were beyond the reach of the law.

Such was the effectiveness of the Walker-Otis law after the courts of this State had passed upon it. That racetrack gambling could be stopped, it was necessary that the Legislature should correct the defects which the court's interpretation had uncovered. And this the racetrack gamblers were determined should not be done.

But it was done.

The amended Anti-Racetrack Gambling bill was drawn by William H. Donahue, District Attorney of Alameda County.

Instead of containing a single sentence, as in the case of the Walker-Otis law, the measure was drawn in subdivisions, each stating a complete offense in itself, and not depending upon any other clause for construction or interpretation.

As Mr. Donahue drew the bill, and as it passed the Legislature:

1. Pool selling or book making, whether done with or without writing, is prohibited.

2. The use of any paraphernalia for gambling in any place is prohibited, whether used gratuitously or otherwise.

3. The stake-holder and the person who forwards a bet is made amenable to the law, whether he acts gratuitously or otherwise.

4. Receiving, or recording, or registering bets, whether done in a single instance, or as a business, is made unlawful.

5. The owner or owners of the racetrack who permit any violation of this law are made just as guilty as the original offender.

6. The making of any bet, whether oral or otherwise, upon any trial or contest of skill, speed or power of endurance of beasts, man or mechanical apparatus, is made unlawful.

The measure was introduced in the Senate by Walker of Santa Clara, and in the Assembly by Young of Alameda. It became known as the Walker-Young bill.

The one sharp contest over this bill came before a joint meeting of the Senate and Assembly committees on Public Morals. But the old-time machine no longer dominated the committee. Instead, Senator Bell of Pasadena presided.

Frank Daroux, the gambler, was in Sacramento, but he was not heard, as he had been two years before when

the Walker-Otis bill was before the Senate Public Morals committee.[212]

Tom Williams appeared as the principal speaker against the bill, but he made no attack upon the proponents of the bill who were present, nor did he vilify the Protestant clergy as he had done when the Walker-Otis bill was before the committee two years before.[212]

Williams' argument against the bill—if it may be regarded as an argument—was that its passage would make the breeding of thoroughbred horses impossible.[213]

Senator George S. Walker, who headed the fight in the Upper House for effective anti-racetrack gambling legislation both at the 1909 and the 1911 session, gave a review of the passage of the Walker-Otis law, what had been expected of it, and what it was proposed should be accomplished by the passage of the Walker-Young measure.[214]

But the principal argument for the bill was made by District Attorney Donahue.

Donahue told the story of conditions at the Emery-

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212 See Story of the California Legislature of 1909, Chapters VI and VII.

213 District Attorney Donahue's reply to this was most effective.

"Much as I admire the racehorse as a noble animal," said Mr. Donahue, "yet if it is a question on the one hand of preserving the highly bred horse, or, on the other hand, of conserving the manhood of the State, I say to you, frankly, that The People of the State of California want the members of this Legislature to conserve the manhood of the State and preserve the morals of Society by enacting this law which suppresses racetrack gambling."

214 Senator Walker stated that when the Walker-Otis law was passed, it was thought that bookmaking and poolselling at the racetracks would be prevented.

"I thought then," said Walker, "and I think now, that the Walker-Otis law is a good law. But the Courts have held otherwise, and the bill before you has been introduced to meet the defects which the Courts have found in the law passed two years ago."

ville racetrack; showed how unscrupulous men were at the track preying upon gullible victims; showed that the law was not only being evaded, but broken;[215] showed that perjury was being added to the crimes which the gamblers were forcing upon the State.

The committees, after hearing the arguments, unanimously reported the measure back to their respective houses with the recommendation that it "do pass."

The next move of the opponents of the bill was to delay its passage. Their purpose was to permit continuance of the operations at Emeryville—where the gambling, law-evasion, law-breaking and perjury-promoting, which District Attorney Donahue had described, was going on—to the last possible day.

Soon after the action of the committee, Frank Leavitt, once Senate leader, appealed to his former associates to amend the act so that it would not take effect immediately upon receiving the Governor's signature.

The petitioning Leavitt was in curious contrast to

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215 After showing how the recorder of bets is clearly guilty of crime, District Attorney Donahue went on:

"The question may now be asked, why do not the officers prosecute the man who records the bet and the man who makes the record upon the program? The answer is that it is almost impossible to secure evidence that will warrant a conviction, by reason of the fact that no one sees the record made and those unfortunate men who accept this employment, do not know by whom they are employed. All they know is by whom they are paid, and there is no way to show that the man who pays them knows what they are being paid for, except that he is following instructions. Fifteen of those men were caught, right in operation, brought before the Grand Jury, and, in addition to the crimes they were committing each day, every one of them added to that crime, the crime of perjury, by denying that they knew anything about the records being made, or that a record was made. There is no doubt but that the bookmaker and the stakeholder, who are the 'gentlemen' in the game, have full knowledge of the fact that there is in the crowd a man who makes a record, and they repeat, in an audible tone, in order that he may make that record, but they industriously keep from contact and from any communication with him, in public."

the Leavitt of 1907, who was then a member of the Senate Public Morals Committee which held up the Eshleman Anti-Racetrack Gambling bill, which had passed the Assembly, thus blocking further action upon it. The principal argument made for delay, was that unless the horses at Emeryville were given time to eat up the hay stored there, great loss would ensue.

Astonishing as it may seem, the Progressive leaders in the Senate finally yielded to this. curious argument, and consented to an amendment by which the bill would not go into effect until fifteen days after its passage.

This meant that the measure had to be reprinted and be again compared by the Senate Committee on Enrollment and Engrossment.

In the Enrollment and Engrossment Committee, measures are passed upon in the order in which they are received. The Oakland Municipal Charter had precedence in the Committee over the Walker-Young bill. Numerous errors were discovered in the printing of the Oakland Charter. As a result, action on the Walker-Young bill was delayed. Every day's delay meant another day of opportunity and exploitation for the gamblers at Emeryville. In one way and another, there was a delay of two days in the passage of the bill.

This thoroughly exasperated Progressive leaders, who had intended to act generously with the gamblers. But the Progressives had a club well calculated to prove effective.

The Assembly companion to the Senate bill had not been amended to give the gamblers their fifteen days of grace. It could be passed in the Assembly at any time,

and rushed over to the Senate, where its passage was but a matter of a few hours.

That this move would be taken unless the blocking of the Senate bill was stopped, became common talk at the Capitol. In a twinkling the Senate bill got clear way in the Senate and was passed by that body. Three days later the bill passed the Assembly.

Within a few hours after its passage, the measure had been signed by Governor Johnson, and had become the law of the State.[216]

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216 An attempt was made by C. T. Boots and other reputable horsemen to secure legislation which would authorize the appointment by the Governor of a commission to oversee horse-racing in California, and to place the sport on a legitimate basis. But the gambling element, by trickery, inserted a paragraph in one of the drafts of the proposed measure, which would have practically restored the conditions at the race courses which prevailed before the passage of the Walker-Otis bill in 1909. A second bill was prepared and introduced, but this measure did not come to a vote in either House.

CHAPTER XV.

PROPONENTS AND OPPONENTS OF LOCAL OPTION.

Growing Opposition to the Saloon Comes From Conditions Due to Its Exploitation by Interests Which Are at the Same Time Exploiting the Social Evil.

Under the domination of the machine, when public demand for the passage of a good measure could no longer be ignored, the trick was to amend the bill into ineffectiveness, and then enact it into law.

The opposition to the Local Option bill attempted this at the 1911 session. The contest which ensued was long and bitter, but in the end the proponents of Local Option won a substantial victory.

The fight made against the Local Option bill at the 1911 session was not unlike the opposition, two years before, to the passage of an effective Direct Primary law. The railroad lobby which made the fight against the Direct Primary bill memorable, was absent from the 1911 session to be sure. But the liquor lobby took its place, and from the beginning to the end of the session labored, not to defeat the Local Option bill in its entirety, as had been the policy at previous sessions, but to substitute for the practical county unit of prohibition the impractical township unit. That is to say, under the bill as it was originally introduced, the people of any city or town, or of any county outside cities and

towns, could call an election by petition, to decide whether or not saloons should be licensed in the territory covered. The opponents of local option aimed to have the elections outside cities and towns confined to townships.

There were many good reasons why the township unit should not be substituted:

(1) Upon a city or town voting "dry" the narrow rim of the township in which such city or town might be located, could be, and to a certainty would be, colonized by the liquor interests, a Local Option election called, and the licensing of saloons authorized. The city that had voted out saloons would thus find itself surrounded, without opportunity for police regulation, with road houses and saloons of the character to be looked for when police regulation is slack or is removed.

(2) The boundaries of a township are subject to change at any time at the hands of the supervisors. Hostile supervisors could thus run township lines to ensure a number of "wet" townships, which, with the business monopolized and beyond police control, would eventually lead to abuse and scandal.

There were various other arguments advanced in opposition to the township unit, but enough has been said to show that the substitution of the township for the county unit would, generally speaking, have rendered the Local Option law little better than a farce.

Nevertheless, the point of attack was well calculated to promote friction among the proponents of Local Option themselves.

(1) In the Middle West, where Local Option has

been employed with the greatest success, the unit of prohibition is the "township." But the "township" of Middle West States is a very different political subdivision than the indefinite township of California. In California, as has been seen, township lines may be changed at the whim of a supervisor. The township organization gets no further than justice of the peace and constable, each having functions which had better be entrusted to county judges and sheriffs' offices. But in the Middle West township organization is not unlike county organization in California, with its Boards of Trustees and other officials.

But in spite of this fact, opponents of the Local Option bill cleverly argued that since the township unit has proved satisfactory in the Middle West, the township unit would prove satisfactory in California.

(2) Then again, in certain instances, the township unit in California permits of "dry" townships, which under the county unit would be "wet," the majority of the voters of the county in which such townships are located being for licensing of saloons. Thus several very good men in both Houses were won over to the township unit,[217] although they had the suggestive fact before them that the known enemies of Local Option

217 It is interesting to note in this regard, that until the Local Option law was passed, there was no "dry" territory in California, township, or otherwise, that was "dry" except at the pleasure of the municipal trustees, if the territory were a town or city, or of the supervisors, if the territory were a township or county. Even under the county, or the supervisorial district unit, the supervisors need not issue licenses even in territory which has voted "wet." Even under the Local Option law, regardless of the supervisorial district vote, no Board of Supervisors need force saloons upon a township that does not want them.

Curiously enough, the Local Option proponents were willing to have a provision put into the bill to make it mandatory upon the

were working for the township unit and the recognized friends of Local Option against the township unit.

(3) At the 1909 session the proponents of Local Option had consented to the township unit.

This argument was strongly urged against the county unit, the inference being that those who were for the township unit at the 1909 session were not showing good faith in refusing to accept the township unit in 1911.

But the manner in which the Local Option people were tricked into consenting to the township unit at the 1909 session reflects no particular credit upon those who forced the township unit feature upon them.

Briefly, it was represented to the proponents of the 1909 bill, that if the bill be amended to make the town-

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governing boards of municipal trustees or of county supervisors in territory that might vote "wet" to issue saloon licenses.

Such a provision would have required a statement of the conditions under which the license should be issued.

The Local Option people were willing that there be no restrictions, thus putting the question squarely up to the people, of no license or wide-open town. The saloon people realized that this would not do, for few California communities would vote for a "wide-open" policy, and every Local Option election would result in defeat for the saloons.

On the other hand, such restrictions as would govern in the issuance of saloon licenses would have to be made uniform. These restrictions would also have to be made strict, or The People of the greater part of the State would vote the no-license ticket. But if the restrictions were made strict, the Local Option people would call elections in communities where the saloons are strongly entrenched and saloon regulation is lax. In such communities the "drys" would win no matter how the election went. If the community voted "dry," the saloons would be closed. If it voted "wet," the saloons would be brought under the restrictions of the Local Option law.

The opponents of the bill, therefore, were prepared to oppose anything that would make it mandatory upon the governing board of the territory in which Local Option elections might be held, to issue licenses if the community voted to license saloons.

Thus, when territory does vote "wet," there is nothing in the law to compel the governing board to issue saloon licenses because the liquor people themselves object to such provision.

ship the unit of prohibition, the measure would be passed, otherwise it would be defeated.

As in the case of many good citizens who appear at sessions of the Legislature, the Local Option advocates did not realize that compromise with the machine means defeat. The proponents of the bill realized that at the 1909 session, through control of the committees of the two Houses, the "Machine" had the whip hand. They hoped even with the impractical township[218] unit, to get a comparatively effective bill, which was to be the opening wedge to something better later on. They accordingly consented to the township compromise and bent their energies toward strengthening the bill in other particulars.

The machine leaders thereupon turned about and defeated the bill.[219]

But the fight for a practical Local Option measure did not end with the defeat of Local Option in the 1909 Senate. As in the case of so many other reforms accomplished in 1911, the Local Option fight in 1909 was the beginning of a contest which two years later was to be fought to successful conclusion.

The proponents of the measure after their defeat in 1909 went before The People with a campaign of education, the effects of which were seen in the 1911 Legislature.

To meet this, the opponents of Local Option insti-

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218 It was contended that at the 1909 session, the local option people asked for the township unit only. But this is not the case. The bill (Senate Bill 55, Series of 1909), as introduced by Senator Estudillo, January 8, 1909, provided for the county unit. The measure was amended to substitute the township for the county unit, February 19, 1909. See Senate Journal, 1909.

219 See Story of the California Legislature of 1909.

tuted one of the most remarkable campaigns against individual candidates ever carried on in this State.

The saloonmen's principal opposition, however, was centered upon Mr. A. J. Wallace, candidate for Lieutenant-Governor.[220]

The most generally circulated of the pro-saloon literature was signed "California Beer Bottlers' State Board of Trade, Louis R. Levy, Secretary." The circular recommended to the saloon trade and its sympathizers, "Don't be afraid to spend a dollar if necessary where it will do some good."

"In those districts where we know both candidates are either fair, or are opposed to us," the circular goes on to say, "it is useless to try to do anything. Our energies must be centered against A. J. Wallace[221] and the names mentioned in the enclosed list."

Although by expending "a dollar if necessary where it will do some good," the liquor interest may defeat

220 It is interesting to note in this particular that the saloon campaign against Mr. Wallace resulted in nothing. Mr. Wallace was elected. In this connection, it may be added, that five of the twelve State Senators who voted for Local Option in 1909 were candidates for re-election to the 1911 Legislature. They were Bell, Boynton, Cartwright, Black and Wright. The five were elected. On the other hand, nine Senators—Anthony, McCartney, Kennedy, Willis, Price, Leavitt, Reilly, Weed and Hartman—who voted against the 1909 Local Option bill, were not re-elected to sit in the 1911 Legislature.

221 This attack upon Wallace was generally condemned, even by those who took no particular interest in his candidacy. This was well expressed by the Santa Cruz News in its issue of November 18, 1910:

"When the News found the State placarded with bills and the papers in the larger cities spread over with advertisements calling upon the people to defeat A. J. Wallace for Lieutenant-Governor, because he is out of sympathy with the liquor interest, this paper took special notice of his candidacy and called upon the people to vote for him. The News did this because it does not want to see any man boycotted for his opinions. At the time, it reminded the liquor interest that it was making a serious blunder, for such methods would be sure to spread sentiment for the threatened Local Option law and other restrictive legislation aimed at the

this or that candidate for the Legislature, they cannot stem the tide that is unquestionably gathering against the saloon business as it has been and is being conducted in California.

The evils complained of come from the combined exploitation of the saloon business and of the social evil and gambling by wholesale liquor houses and even by financial institutions.[222]

The conditions that inevitably result from this

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saloon. The News has received the following letter from the Lieutenant-Governor-elect:

" 'To the Editor of the News: Sir—A very great many have sent me congratulations in these days, but what I prize in your case is the evidence of the earnest work done before the final day. Your putting of things in the News was very strong and just the kind of thing that is helpful. The liquor business hurt itself and strengthened the forces opposed to it.

" 'But it is the future we must look to and the chance to do good work, or receive deserved condemnation. The opportunity at Sacramento this winter is great.

" 'Thanking you again for the hearty work in my behalf and in behalf of the ticket, Yours very truly,

" 'Los Angeles, Nov. 14. A. J. WALLACE.'

"The 'liquor people' have exactly the same right to engage in politics as the 'church people.' But when a campaign is made against a good man on the single ground that he is not in sympathy with the saloon, it will arouse the same resentment in any fair-minded citizen that would be aroused by a campaign of 'church people' against a good man because he is not satisfied that prohibition is the true solution of the liquor question."

222 Astonishing examples of this are furnished in the official report on the San Francisco Graft Prosecution, made by a committee of citizens, appointed October 12, 1908, by Hon. Edward R. Taylor, then mayor of the City and County of San Francisco. The committee consisted of Mr. William Denman, chairman, a leader of the San Francisco bar, and son of the founder of the public school system of that city; Mr. Alexander Goldstein, one of the foremost merchants of California; Rev. William K. Guthrie, a prominent Presbyterian clergyman; Hon. William Kent, now Congressman from the Second Congressional District, a successful businessman and capitalist; Dr. Henry Gibbons, Jr., dean of the Cooper Medical College; Mr. Will J. French, a prominent labor leader and editor of the San Francisco "Labor Clarion"; and Rev. Father D. O. Crowley, who has done a magnificent work in providing care and education for homeless boys.

After describing the notorious "French restaurants" that flourished in San Francisco during the Schmitz-Ruef regime, the report prepared by this commitee sets forth:

"One of the largest of these assignation places was located on a prominent corner of the downtown shopping district, where hun-

alliance find expression in the scandals which are made manifest through the retail saloon, roadhouse and dive. As President David Starr Jordan, in a letter to the members of the Legislature, advocating the passage of the Local Option law, tersely put it, "Most young men who frequent saloons sooner or later find themselves in the brothel. Every prostitute, male or female, the world over, is sooner or later a victim of one or the other of the Red Plagues. For these reasons, the saloon, as we know it, is everywhere a menace and a

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dreds of women daily passed its doors. The building, five stories in height, had four stories devoted to the private supper bedrooms. The land was owned in trust by one of the largest, if not the largest, trust company in the West. A lease was sought and obtained by a man notorious in the line of business above described; the building was constructed by the trust company according to plans satisfactory to him for this purpose, and the enterprise was conducted there for seven years until the building was destroyed by fire.

"The significant thing about such a transaction is, not that there are people who are willing to accept money from such a source, or financiers willing to put trust moneys to such uses, but that the facts, though well known, did not seem to detract in the slightest from the social recognition accorded to the persons so taking a share of the profits, while the officer of the trust company which made the lease of that particular house situated in the shopping district was appointed a regent of the State University."

The report goes on to detail a raid upon a notorious house of prostitution, and then described the outcome as follows:

"In the raid one hundred and sixty prostitutes were arrested from the one house, and released on the deposit of bail money exceeding in all sixteen thousand dollars. It was subsequently published—and never denied—that the money was furnished by a prominent liquor man who was, at the time of the publication, the president of one of the oldest, the most powerful, and the richest of the associations of merchants in the city. That their president, a wholesale liquor man, might be also a wholesale backer of prostitution, did not arouse the merchants to the extent of even making an investigation, and he served out his term, which, at the time of the exposure had less than one-half expired. The fact that his company was, at the time of the raid, selling liquors to a large number of resorts whose licenses were dependent upon the Schmitz Board of Police Commissioners was accepted by many as a sufficient excuse for his supplying the bail."

curse, *which no civilized community would tolerate were it not for the money behind it.*"[228]

Senator Stetson, although opposing the county unit, stated before the Free Conference Committee, of which he was a member, that "The liquor conditions at Sacra-

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228 President Jordan's letter was in full as follows:

"Stanford University, Cal., Jan. 27, 1911.

"May I ask your attention for a moment to certain considerations on temperance, in view of the legislation now pending at Sacramento?

"The question of temperance is three-fold—the problem of moderate drinking, the problem of drunkenness, and the problem of the saloon.

"As to moderate drinking, it would be no public concern if it would stay moderate, and if the places devoted to it were not of themselves sources of public danger. Moderate drinking has its perils, but they are met by education rather than by legislation.

"Drunkenness is a public matter, for the drunken man is deranged, temporarily or permanently, and becomes a public nuisance. Drunkenness is a constant menace to society, and society has no business to tolerate that kind of traffic which brings it about.

"The saloon is a place in which liquor is sold under social conditions. The average saloon sells much beer, little wine, and considerable whisky, in bad company, with the features of much treating and small gambling. Beer is one of the weakest of alcoholics, but in the way in which it is used it has become one of the most dangerous. Enough beer destroys a boy's will. It may lead to the whisky habit, and that habit to destruction. Far worse is the close connection between the saloon and the brothel. Half-drunken boys are swept off to the red light district to be poisoned for life by the Red Plagues. Two little, slow-maturing parasitic plants constitute one of the greatest curses the world knows. The one produces Syphilis, slowly eating up the walls of the little blood vessels, and consigning its victim to a living death. The other plant produces the disease of Gonorrhea, less hideous, but equally dangerous because no patient ever knows that he is cured of it. Its trend of consequences to wife and children make one of the most ghastly chapters in the history of medicine. Most young men who frequent saloons sooner or later find themselves in the brothel. Every prostitute, male or female, the world over, is sooner or later a victim of one or the other of the Red Plagues.

"For these reasons, the saloon, as we know it, is everywhere a menace and a curse, which no civilized community would tolerate were it not for the money behind it.

"Besides the ordinary saloon, bad enough at its best, we have two forms of drinking places which especially demand suppression—the Dive and the Roadhouse. The dive is the expression of personal degeneration in the cities, the drinking place at which music, women and dancing are brought in as additional temptations to the weak and the wavering. If we must have drinking places, we should keep our women out of them. Those who frequent these places must leave all hope behind. The roadhouse is a saloon outside of government, and which may be as bad as bad men and worse women can make them. Around each of our cities the road-

mento[224] are enough to make a prohibitionist out of anyone," and that "It would be better for the State if every county went dry."

It may be said, however, that the "liquor conditions" at Sacramento of which Mr. Stetson complained, are no worse than they are at the great majority of other important California cities, and are not nearly so bad, even by comparison, as at San Francisco. And these conditions come not from the legitimate sale of liquors, but because of the exploitation of the liquor business in

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house is a house of assignation in which hard-drinking is merely an incident in the vilest evils known to society.

"The law we need in California is one already in effect in several Eastern States. It involves these elements:

"1. Exclusion of women from saloons and drinking places.

"2. Prohibition of all public drinking places outside of incorporated towns.

"3. Local option of the city, town, ward or other subdivision of the city to have the question of license decided by popular vote.

"If it is not feasible at the present time for the Legislature to go as far as to adopt all these measures, then surely it should give us such a moderate law as proposed in the Wyllie Local Option bill, which will enable the city, town, and unincorporated portion of the county to determine for themselves whether the retail traffic shall be licensed within the territory concerned.

"It is not against wine and beer as such, but against the public saloon, that the present nation-wide movement is mainly directed. And every good interest, moral, social, and financial, demands the abolition of the retail liquor traffic as it is now carried on. If our brewers can find no other way of disposing of their wares, then society will ask that they shall go out of business, for the public good. I am, Very respectfully yours,

"DAVID STARR JORDAN."

224 The Sacramento Bee, in its issue of January 29, 1911, concluded an editorial article on saloon conditions at the State capital as follows:

"The Bee itself does not believe in prohibition as a remedy for the conceded evils of the liquor traffic, but it says quite frankly to the Royal Arch, for many of the members of which it has sincere respect, that it will lead a prohibition campaign in Sacramento rather than see present conditions continue, to the injury of youth and the nullification of Chamber of Commerce work in development.

"Gentlemen of the Royal Arch, we will omit the question of morals involved in this issue. The Bee puts it up to you as a practical proposition. Do you wish to stay in business, or do you wish to be driven out by the illegal and indecent conduct of some of your members?"

connection with the exploitation of the social evil and gambling.

These exploiters were the real opponents of the Local Option bill, although they cleverly kept in the background and let the arguments against the bill be advanced by hop growers and vineyardists, particularly the latter. The vineyardists and wine men of California, however, have very little at stake in the fate of the saloons.

The statement has been made that wines do not constitute 3 per cent. of the liquors sold over California bars. Wine men have admitted to the writer that this estimate is too high, that 2 per cent. would be nearer the correct percentage.

Local Option deals with the saloon primarily.

Nevertheless, the exploiters of the liquor business, who have much at stake, cleverly kept out of sight and permitted the California hop grower, grape grower and wine maker,[225] whose interests are not so apparent, to bear the brunt of the fight.

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225 The appeal to California industries went beyond hop grower, vineyardist and grape crusher. An owner of a cherry orchard told the writer recently that he opposed Local Option because it would ruin the California cherry-growing industry. It developed that this man had been told that cherries are used in making cocktails, that the Local Option meant closing of saloons, and this meant fewer cocktails, and hence less demand for cherries.

As this argument is actually taken seriously in some quarters, it is not amiss to say that the "California Fruit Distributors," which handles the bulk of the fresh deciduous fruits shipped from the State, is authority for the statement that if the California cherry crop were to be doubled there would still be a ready sale for it, and that there is no probability of the State ever producing enough cherries to meet the legitimate demand.

CHAPTER XVI.

COUNTY UNIT DEFEATED.

The Local Option Bill Passed the Assembly With Provision Making the County the Unit of Prohibition. But in the Senate, by Narrow Margin, the County Unit Was Struck From the Bill and the Township Unit Substituted.

Wyllie of Dinuba, who introduced the Local Option bill in the Assembly at the 1909 session, also introduced the 1911 measure. Estudillo, who had led the Local Option fight on the Senate side of the Capitol, assumed leadership in the 1911 contest in the Upper House.

The lessons taught two years before were not forgotten. The Local Option people had been schooled liberally at the 1909 session in the fine points of machine deception. They realized that the only way to secure the passage of a Local Option law was to fight for it, and they went to Sacramento prepared to fight.

No chances were taken. The opposition was regarded as an uncompromising enemy of the reform, and was treated as such. Inasmuch as neither the Republican nor the Democratic party had declared for Local Option in their State platforms, the measure was without the party backing which was given the other reform bills. The proponents of the measure were thrown on their own resources. In this independent attitude they

alternated between defeat and success until the close of the session, when they forced one of the most notable reform victories in the history of California legislation.[226]

The first clash came before a joint meeting of the Senate and Assembly Committees on Public Morals. The scene was not unlike that which attended the hearing on the Walker-Otis Anti-Racetrack Gambling bill at the 1909 session.[227] There was the same denunciation of the proponents of the bill, similar abuse of the clergy, the same questioning of motives, the same predictions of direful injury to California industries if the measure became a law. In 1909 the representation was that if the Anti-Racetrack Gambling bill became a law, the California horse raising and grain growing industries would be seriously injured. In 1911, the protestation was that the passage of the Local Option bill meant ruin for hop grower, vineyardist and grape crusher. But the greater part of the time of the opponents of the bill was taken up with abuse of those who advocated its passage.

The principal speakers who opposed the bill were Henry Austin Adams; J. W. Bourdette of the California Brewers' Association; George E. Farwell, Pacific Coast representative of the National Manufacturers' and Businessmen's Association, and A. Sbarboro of the Italian Bank of San Francisco.

Of Mr. Sbarboro, it may be said, he did not descend

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226 The credit for this victory is primarily due to the untiring efforts of Rev. D. M. Gandier, without whose vigilance and tireless devotion to principle, the Local Option bill could not have been passed.

227 See Story of the California Legislature of 1909, Chapters VI and VII.

to abuse and vilification, nor did he denounce the proponents of the measure in lieu of argument. Instead he argued for the use of wines in the home, which was not in issue at all. With vitriolic abuse from most of the speakers in opposition to the measure, and a curious lecture on the wholesomeness of the drinking of wine at meals from Sbarboro,[228] the opponents of the bill made little headway.

The proponents of the measure, after stating their case, rested, except for an occasional yielding to the temptation to poke fun at their angry opponents.

Adams, for example, stated that a Vermont town which had gone "dry," was importing "tons of cocaine" as a substitute for intoxicants.

Chester H. Rowell, who spoke for the bill, good-naturedly observed that that town must be fabulously rich, because cocaine by the ton costs something like $115,000.

The principal speakers in behalf of the bill were Rev. D. M. Gandier of the Anti-Saloon League; Chester H. Rowell; Hon. E. P. McDaniel, Judge of the Superior Court of Yuba County; and Hon. J. O. Davis of Berkeley, a former Assemblyman, and prominent as a Democratic party leader in California.

The sane arguments [229] of the proponents, presented

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228 Sbarbaro's address was the same talk which he has delivered so many times on the liquor question. Sbarbaro's earnestness must be admitted, but he seems utterly unable to understand what Local Option means, or to grasp the fact that the correction of the abuses of the saloon will, in the end, result to the real advantage of the grape grower and legitimate wine maker and seller.

229 The proponents of the bill stuck to the principle that The People have the right to regulate the conduct of any business which exists through public grant of license.

"The right to run a saloon," declared Chester H. Rowell, "is a public right, not a private right. Any community that wants them ought to be permitted to have them; and any community that does not want them should have the right not to have them."

with exasperating good nature, took the opponents of the bill off their feet. After the meeting adjourned, even the leaders of the opposition admitted they had been defeated at every point.

The Assembly Committee on Public Morals finally reported the bill back, the majority recommending its passage, while a minority urged its defeat. The Assembly was quick to adopt the majority report, accepting such amendments as the majority had recommended, and passing the measure on to third reading. This was done, however, in spite of the protest of Assemblyman Schmitt, who took the leadership against the bill, and was prepared to contest every move toward its passage.

Before the measure came up for final consideration, twenty-four Assemblymen [230] met to decide upon the course to be followed when the bill should reach the Assembly floor. Senator Estudillo, who was leading the fight for the measure on the Senate side, was present.

All but two of the Assemblymen present agreed to support the bill without further amendment. The two in question reserved the right to vote for certain amendments on the floor of the Assembly.

But the organized proponents of the bill found their hands full in securing prompt consideration of the measure.

When the bill came up on January 31, Wyllie proposed an amendment which was made at the request of the wine

230 The Assemblymen present at the conference were: Benedict, Bishop, Bohnett, Butler, Cattell, Chandler, Clark, Cogswell, Cronin, Gaylord, Guill, Hamilton, Hall, Hinkle, Hinshaw, Jasper, Judson, Kehoe, Mendenhall, Mott, Smith, Wilson, Wyllie, Young. The conference was not called until afternoon of the day it was held. There was no systematic attempt to reach all the friends of the bill. Many who would have liked to attend knew nothing about the meeting until it had adjourned.

makers. This amendment authorized the delivery of wines in dry territory to heads of households in quantities not less than three gallons. The amendment required the reprinting of the bill. Schmitt of San Francisco was quick to the fore with a motion that the bill be considered on February 6. This delay was not deemed advisable by the proponents of the measure. Wyllie accordingly moved to amend the motion, by making the date of hearing February 2.

Coghlan of San Francisco thereupon out-Schmitted Schmitt by moving as an amendment to the amendment that the hearing be on February 8.

The straightening of this tangle required three roll calls. Coghlan's amendment to make the date February 8 was defeated by a vote of 15 to 49; Wyllie's amendment, fixing the hearing for February 2, prevailed by a vote of 43 to 26, and, as amended by Wyllie, the motion was adopted by a vote of 48 to 16.[231]

The outcome of this skirmish not only gave the Local Option forces the advantage of early consideration of the bill, but demonstrated that the Assembly was overwhelmingly for the passage of a Local Option measure.

On February 2 came the real fight against the measure. The first attack, and the most important, was made

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231 The vote by which the hearing was finally set for February 2 was as follows:

Ayes—Beatty, Beckett, Benedict, Bishop, Bliss, Bohnett, Brown, Butler, Cattell, Clark, Cogswell, Cronin, Crosby, Farwell, Flint, Freeman, Gerdes, Guill, Hall, Hamilton, Harlan, Held, Hewitt, Hinkle, Hinshaw, Jasper, Jones, Joel, Judson, Kehoe, Lamb, Lynch, Maher, Malone, March, Mendenhall, Mott, Polsley, Preisker, Randall, Rogers of Alameda, Rosendale, Smith, Stevenot, Telfer, Williams, Wyllie, Young—48.

Noes—Callaghan, Coghlan, Cunningham, Fitzgerald, Griffin of Modesto, Kennedy, Lyon of San Francisco, McDonald, Mullally, Nolan, Rodgers of San Francisco, Ryan, Sbragia, Schmitt, Tibbits, Wilson—16.

against the unit of prohibition. Slater of Santa Rosa offered a series of amendments which substituted the township for the county unit.

Although seventy-six out of eighty members were present, Assemblyman Coghlan moved that the doors be locked until the absentees could be brought in by the sergeant-at-arms and compelled to vote. This move was defeated by a vote of 26 to 46. This compelled immediate vote on Slater's [282] amendments. The amendments were lost by a vote of 33 to 43.[283]

This was the test vote in the Assembly on the Wyllie Local Option bill. The final passage of the measure was little more than a formality. Fifty-six Assemblymen voted for it, and twenty against it.[284]

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282 Slater voted for the bill on its final passage. At his request the following explanation of his vote was printed in the Journal:

"I intimated to members of the committee if a fair amendment was granted that would enable wineries and breweries to handle their products in 'dry' territory I would support the Wyllie bill. An amendment eliminating in a measure the drastic provisions of the original bill having been adopted, I feel it incumbent upon me to fulfill my word. I believe firmly that the provisions of the bill are still too drastic and should be amended, and my amendment, asking for a township unit, and the regulation and limiting of saloons should in all fairness have prevailed."

283 The vote on Slater's amendments was as follows:

For the amendments—Beatty, Callaghan, Denegri, Feeley, Gaylord, Griffin of Modesto, Hayes, Held, Jones, Joel, Kennedy, Lynch, Lyon of Los Angeles, Lyon of San Francisco, Maher, Malone, McDonald, Mullally, Nolan, Rimlinger, Rodgers of San Francisco, Rogers of Alameda, Rosendale, Ryan, Sbragia, Schmitt, Slater, Stuckenbruck, Sutherland, Tibbitts, Walker, Walsh, and Wilson—33.

Against the amendments—Beckett, Benedict, Bennink, Bishop, Bliss, Bohnett, Brown, Butler, Cattell, Chandler, Clark, Coghlan, Cogswell, Cronin, Crosby, Farwell, Fitzgerald, Flint, Freeman, Griffiths, Guill, Hall, Hamilton, Harlan, Hewitt, Hinkle, Hinshaw, Jasper, Judson, Kehoe, Lamb, McGowan, Mendenhall, Mott, Polsley, Preisker, Randall, Smith, Stevenot, Telfer, Williams, Wyllie, and Young—43.

284 The vote by which the Wyllie Local Option bill passed the Senate was as follows:

For the bill—Beckett, Benedict, Bennink, Bishop, Bliss, Bohnett, Brown, Butler, Cattell, Chandler, Clark, Coghlan, Cogswell, Cronin, Crosby, Farwell, Flint, Freeman, Gaylord, Griffiths, Guill, Hall,

Having passed the Assembly, the Local Option bill went to the Senate, where, in the regular course of legislative business, it was referred to the Committee on Public Morals.

Before that committee, the saloon people contended for three principal amendments:

(1) To permit the storage of wine in "dry" territory.

(2) To permit the sale of "near-beer" in "dry" territory.

(3) To substitute the township for the county unit.

The first contention was allowed by the committee, and was admitted by the proponents of the bill to be a reasonable demand. The second and third contentions were not allowed. The committee reported the bill back to the Senate with the recommendation that it do pass, and its opponents carried their fight against it to the floor of the Senate.

As in the Assembly, the clash came over the question of unit.

Senator Juilliard offered a series of amendments to change the unit from county to township. And over these amendments the debate was for the most part held.

As in the Assembly, the opponents of the measure devoted themselves in the main to the abuse of all who supported the bill. Senator Wolfe of San Francisco was particularly bitter in his denunciation, which called forth

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Hamilton, Held, Hewitt, Hinkle, Hinshaw, Jasper, Jones, Joel, Judson, Kehoe, Lamb, Lynch, Lyon of Los Angeles, Maher, Malone, McGowen, Mendenhall, Mott, Polsley, Preisker, Randall, Rogers of Alameda, Rosendale, Slater, Smith, Stevenot, Stuckenbruck, Sutherland, Telfer, Walker, Williams, Wilson, Wyllie, and Young—56.

Against the bill—Beatty, Callaghan, Denegri, Feeley, Fitzgerald, Griffin of Modesto, Harlan, Hayes, Kennedy, Lyon of San Francisco, McDonald, Mullally, Nolan, Rimlinger, Rodgers of San Francisco, Ryan, Sbragia, Schmitt, Tibbits, and Walsh—20.

good-natured, but none the less cutting replies from the more tolerant supporters of the measure.[235]

Although the proponents of the measure had three times defeated the efforts of the saloon element to substitute the township for the county unit, that is to say, before the Assembly Committee on Public Morals, on the floor of the Assembly, and before the Senate Committee on Public Morals—in the fourth and last contest, the saloon interests carried their point.

By a vote of 23 to 17 [236] the Senate adopted Juilliard's

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235 "Senator Wolfe," observed Senator Estudillo humorously, in closing the debate, "reminds me of the story of the young lawyer who confessed to his senior that he had neither law nor facts to support his case.

" 'Then,' replied the older lawyer, 'give the other fellows hell.'

"Senator Wolfe," concluded Estudillo, "has no law and no facts on his side. He has therefore given my poor friends who support this bill, hell."

But it remained for Senator Larkins to demonstrate the absurdity of Wolfe's arguments.

"Senator Wolfe in opposing this bill," said Larkins, "makes a plea for the home. But Senator Wolfe knows that the saloon destroys the home. All we ask is that we Americans have opportunity to say to the men who are destroying our homes: 'You shall no longer dictate to us.'

"Senator Wolfe has asked, What is the matter with California?

"In reply, I would say that California has been cursed with two of the most rotten institutions that ever cursed a State, the one is the Southern Pacific Railroad and the other the saloons. That is what is the matter with California."

Senator Gates expressed amazement that a gentleman of "sixteen years' experience in the Senate" should make the mistake of proving too much.

Wolfe had said that local option and prohibition increase the consumption of liquor.

"Then," demanded Gates, "if local option and prohibition increase the consumption of liquor, why are the liquor interests opposing local option and prohibition?"

236 The vote on Juilliard's amendments to substitute the township for the county unit was as follows:

For the amendments—Beban, Bills, Birdsall, Bryant, Burnett, Caminetti, Cassidy, Curtin, Finn, Hans, Hare, Holohan, Hurd, Juilliard, Martinelli, Regan, Rush, Sanford, Stetson, Tyrrell, Welch, Wolfe, and Wright—23.

Against the amendments—Avey, Bell, Black, Boynton, Campbell, Cartwright, Cutten, Estudillo, Gates, Hewitt, Larkins, Lewis, Roseberry, Shanahan, Strobridge, Thompson, and Walker—17.

amendments to substitute the township for the county unit.

Flushed with their success, the opponents of the measure proceeded to adopt amendments which made the bill ridiculously impractical.

One of these amendments, adopted by a vote of 22 to 18, provided no less than six questions that should be submitted to the electors at each Local Option election, and also any other question or proposition relating to the regulation of the traffic in alcoholic liquors which the qualified electors of any city, or town, or township might desire to submit.

One of the six questions was: "Shall the serving of wines and beers at regular meals in dining-rooms of hotels and restaurants be permitted?"

But another section of the bill as amended in the Senate, provided that "nothing in this act shall prevent or prohibit the serving of wines or beers at regular meals in the dining-rooms of hotels and restaurants."[237]

The question naturally arises, why should The People be called upon to vote on this question, if the provision, in the event of the vote being in the negative, could not be enforced?

Another amendment provided that liquors should not be drunk or consumed in quantities of less than two gallons.[288]

Such absurdities could be multiplied. Senator Estu-

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237 See Section 16, last paragraph of the bill—Assembly bill 37—as it was amended in the Senate.

288 The exact wording of this provision was: "and provided further, that none of said liquors so sold or delivered shall be drunk or consumed on the premises where sold or delivered, nor in quan-

dillo, leader of the proponents of the bill in the Senate, described the amended measure as a "crazy quilt of inconsistency."

When the amended bill came up for final passage in the Senate, the supporters of the measure very frankly stated they would vote for it, not because they believed in it, but in order to have it sent to the Assembly, which body could be counted upon not to concur in the Senate amendments.[239] As in the Assembly the final passage of the bill in the Senate was a mere formality. Thirty Senators voted for it; only three voted against it.[240]

The Assembly, without a dissenting vote, promptly concurred in the Senate committee amendments to permit the storage of liquors in "dry" territory. But in the

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tities of less than two gallons." See lines 48 to 51 inclusive, Section 16, of Assembly bill 37 as it was amended in the Senate.

Assemblyman March of Sacramento, when the question of concurrence in the Senate amendments was before the Lower House, stated that on principle he is against local option, but would fight against any measure which required him to "drink two gallons of booze at a time," and compel him to go on to the street to do it.

239 When an Assembly bill is amended in the Senate the measure goes back to the Assembly. If the Assembly concur in the amendments, that settles the matter. But if the Assembly refuse to concur, then the bill goes back to the Senate, where that body may recede from its amendments or refuse to recede.

If the Senate recede, the measure goes to the Governor just as it passed the Assembly. If the Senate refuse to recede, the measure is referred to a Conference Committee of six, three appointed by the Speaker of the Assembly and three by the President of the Senate.

The Conference Committee may consider only the amendments adopted by the Senate. If the Conference Committee fail to agree, or if either Senate or Assembly reject its report, then the bill goes to a Committee on Free Conference. The Committee on Free Conference is permitted to make any amendment it sees fit. If its report be rejected by either Senate or Assembly, the bill gets no further; is dead, without possibility of resurrection.

240 The vote by which the amended Local Option bill passed the Senate was as follows:

For the bill—Beban, Bell, Birdsall, Black, Boynton, Bryant, Campbell, Cassidy, Curtin, Cutten, Estudillo, Gates, Hewitt, Holohan, Hurd, Juilliard, Larkins, Lewis, Roseberry, Rush, Sanford, Shanahan, Stetson, Strobridge, Thompson, Tyrrell, Walker, Welch, Wolfe, and Wright—30.

Against the bill—Caminetti, Hare, and Regan—3.

absurd amendments, and in the amendment changing the unit of prohibition from county to township,[241] the Assembly refused to concur.

This threw the Local Option bill back into the Senate.

At once a most interesting parliamentary situation was created which involved the rulings of Mr. Phil Stanton, when at the session of 1909 he was called upon to rule on the question of dividing the Assembly amendments to the Direct Primary bill.[242]

The 1909 Direct Primary bill had been amended in the Assembly. Some of these amendments were required to correct typographical and clerical errors, and were known as the "necessary amendments." Another series of amendments struck the State-wide plan for nominating United States Senators from the bill, and substituted the impractical district advisory plan, described in a previous chapter. This second series was known as the "vicious amendments."

Twenty-one votes in the Senate were required for concurrence in the amendments. The Senate divided

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241 The Assembly vote on concurrence in the Senate amendments changing the unit of prohibition from county to township was as follows:

To concur in the amendment and against the county unit—Callaghan, Coghlan, Crosby, Cunningham, Denegri, Feeley, Fitzgerald, Gaylord, Gerdes, Griffin of Modesto, Harlan, Hayes, Held, Jones, Kennedy, Lynch, Lyon of San Francisco, Maher, March, McDonald, McGowen, Mullally, Nolan, Rimlinger, Rodgers of San Francisco, Rosendale, Rutherford, Ryan, Sbragia, Schmitt, Slater, Stuckenbruck, Sutherland, Tibbits, Walsh, and Wilson—36.

Against concurrence in the amendment and for the county unit—Beckett, Benedict, Bennink, Bishop, Bliss, Bohnett, Brown, Butler, Cattell, Chandler, Clark, Cogswell, Cronin, Farwell, Flint, Freeman, Griffiths, Guill, Hamilton, Hewitt, Hinkle, Hinshaw, Jasper, Judson, Kehoe, Lamb, Lyon of Los Angeles, Mendenhall, Mott, Polsley, Preisker, Randall, Rogers of Alameda, Smith, Stevenot, Telfer, Williams, Wyllie, and Young—39.

242 For an account of the events which led up to Stanton's rulings on this issue, see Story of the California Legislature of 1909, Chapter XI.

evenly on the real question at issue, the manner of nominating United States Senators. The absence of one State Senator, however, prevented the evenly divided vote which would have given the Lieutenant-Governor the casting vote.

Those Senators who opposed the so-called "vicious amendments" were able to prevent concurrence in them. On the other hand, the Senators who supported the "vicious amendments" were able to prevent concurrence in the necessary amendments for the correction of typographical and clerical errors.

The bill went back to the Assembly. It was generally conceded that the Assembly was prepared to recede from its vicious amendments, but it could not recede from the "necessary amendments" correcting typographical and clerical errors without leaving defects in the measure which were held to be fatal.

Speaker Stanton ruled that the amendments could not be divided, that the Assembly must recede from them all or refuse to recede from them all.[243]

Under this ruling, rather than leave the bill defective, the opponents in the 1909 Assembly of the "vicious amendments" were compelled to vote to refuse to recede from them.

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243 Speaking from the desk, Stanton, in making his ruling, said: "If you recede from some of these amendments and not from others where will your bill be? It will be dead. The only thing that you can do to save the Direct Primary bill now is to recede from all the amendments and let the typographical errors remain in the bill, or refuse to recede from any of the amendments and let the bill go into conference. If you recede from some of the amendments and not from others, your bill is dead. We cannot send this bill back to the Senate saying that the Assembly has receded from some of the amendments and not from others."

The same situation developed in the 1911 Legislature over the Local Option bill.

By the time the Local Option bill came back to the Senate, the absurd amendments that have been referred to were well understood. The better element of the Senate desired to recede from them, but enough Senators held out against receding from the amendment making the unit of population the township, to make recession from that amendment doubtful. But by compelling a vote on all the amendments, it was generally believed that a majority would vote to recede from them all. This would have meant the passage of the bill in the effective form in which it had passed the Assembly. The Stanton precedent justified such ruling.

The attention of Lieutenant-Governor Wallace, who as presiding officer of the Senate would rule on this point, was called to the Stanton precedent. It was decidedly to the interests of the proponents of the Local Option bill that the Stanton precedent be followed. Governor Wallace was among the strongest of the proponents. At the time, it looked as though the passage of an effective Local Option law depended upon whether the Lieutenant-Governor follow the Stanton precedent.

Governor Wallace, however, convinced himself that Stanton's ruling was not in accordance with the best parliamentary usage.

He accordingly overruled the Stanton precedent, holding that the Senate on the question of recession could take up the several amendments separately.

This was done. The Senate receded from some of its amendments, but, by a vote of 18 to 21, refused to

recede from the amendment which made the township the unit of prohibition.[245]

This action threw the bill into a Committee on Conference, to be appointed by President Wallace of the Senate and Speaker Hewitt of the Assembly.

President Wallace appointed to the committee Senators Estudillo, Stetson and Thompson.

Speaker Hewitt appointed Assemblymen Wyllie, Slater and Schmitt.

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245 The vote by which the Senate refused to recede from its "township amendment" was as follows:

For receding and for the county unit—Avey, Bell, Black, Boynton, Campbell, Cartwright, Cutten, Estudillo, Gates, Hewitt, Larkins, Lewis, Roseberry, Shanahan, Strobridge, Thompson, Walker, and Wright—18.

Against receding and for the township unit—Beban, Bills, Birdsall, Bryant, Burnett, Caminetti, Cassidy, Curtin, Finn, Hans, Hare, Holohan, Hurd, Juilliard, Martinelli, Regan, Rush, Sanford, Stetson, Tyrrell, and Welch—21.

CHAPTER XVII.

SUPERVISORIAL DISTRICT UNIT ADOPTED.

Proponents of the Local Option Bill Proposed the Supervisorial District as Substitute for the County and the Township. The Opposition, in Resisting This Compromise, Was Overwhelmingly Defeated.

The proceedings of the Conference Committee on the Local Option bill were opened with a suggestion from Committeeman Schmitt, who was opposing Local Option, that the meeting be executive; that is to say, that representatives of the press be excluded and the hearing be held behind closed doors.[246]

Senator Estudillo opposed such procedure. A majority of the committee decided that the best interests of the State would not suffer if the hearing were open to the public.

The Conference Committee was limited to consideration of the amendments to the bill which were in dispute between the two houses.

On the unit of prohibition the committee divided evenly. Senators Estudillo and Thompson, and Assemblyman Wyllie stood firmly for the county unit. Senator

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246 Most of the meetings of the Assembly Committee on Public Morals, when the Local Option bill was under consideration, were executive, invariably at the request of opponents of the bill. It is noticeable that in nine cases out of ten requests for executive sessions come from men who oppose the passage of desirable measures, or support the passage of bad.

Stetson, and Assemblymen Schmitt and Slater were as insistent for the township unit. As agreement was recognized to be impossible, the committees so reported to their respective houses, and were discharged.

This brought the Local Option bill to the last possible stage of legislative consideration, the Free Conference Committee. If such committee failed to agree in a report, or if either House should reject its report, the Local Option bill could not be enacted into law.

Immediately the Conference Committee had reported its inability to agree, the opponents of the bill began one of the most remarkable technical fights against the measure ever attempted in the California Legislature.

The first move was to secure control of the Committee on Free Conference. A majority of the Senate had voted for the township unit. The extraordinary procedure was proposed—and was a matter of general gossip about the State Capital on the night before the Free Conference Committee was appointed—that the Senate majority that opposed the county unit take the appointment of the committee out of the hands of President Wallace, and the majority itself name the committee. Such a move would have been in direct violation of the Senate and Assembly joint rules.[247] But the plan was considered of sufficient importance to be made subject of special dispatches to the morning papers of March 9.

When the Senate convened on the morning of the

[247] Joint Rule 12 provided that a committee on conference shall "consist of six members, three to be appointed by the President of the Senate, and three by the Speaker of the Assembly." Joint Rule 14 provided that "a Committee on Free Conference shall consist of six members, to be appointed in the same manner as a Committee on Conference."

9th, the request was made of President Wallace that he appoint on the committee Senators Stetson, Martinelli and Sanford. These gentlemen had all opposed the county unit. But this request was not pressed. However, when Senator Estudillo moved that a Committee on Free Conference be appointed, Senator Juilliard moved as a substitute that in appointing such committee the President be most respectfully requested "to follow the former precedent [248] of this Senate and to select for such committee two Senators who voted with the majority and one Senator who voted with the minority when said bill was heretofore considered in this body."

Later on Juilliard asked unanimous consent to withdraw his substitute motion, which was granted. Juilliard then made a request of the President that two of the three Senators to be appointed to the committee be men recorded against the county unit, and for the township unit.[249]

This extraordinary move brought protest from Thompson.

"To comply with the Senator's request," said Thompson, "would overturn a rule of this body. I do not wish to see this bill jeopardized by an irregular course. I want the record to be kept straight."

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248 Under machine rule, Conference and Free Conference committees, where there was some material point in issue, were made up of machine members only. The "precedent" to which Senator Juilliard referred, if there ever were such a precedent, had long since been swept away.

249 Juilliard's request was as follows: "That the President of the Senate be and he is hereby most respectfully requested to follow the former precedent of this Senate and the usual custom in the premises and that he select, on the free conference committee in reference to Assembly Bill No. 37, two Senators who voted with the majority and one Senator who voted with the minority when said bill was heretofore considered in this body."

"You can not," said Senator Cutten, who followed Thompson, "do by indirection what you can not do by direct attack. Why put the President of this Senate in a position of setting aside the rules of this Legislature? The Senate should crush the attempt to tie his hands in this way."

The weakness of Juilliard's position was apparent. Nevertheless, members who were supporting the township unit idea insisted that Juilliard's request be regarded as a "petition."

Very calmly and convincingly, Thompson proceeded to show that the custom in the past has not been, as Juilliard intimated, to appoint one member of a Free Conference Committee from the minority and two from the majority. With the Senate journals of past sessions before him, Thompson showed that when the old-time machine, the remnants of which were opposing the passage of a practical Local Option bill, controlled the Senate, all the Senate members of Free Conference Committees were appointed from that side which the machine element was supporting.

As an example fresh in the minds of many of the Senators, the Free Conference Committee which in 1909 decided the fate of the Direct Primary bill was cited. This Committee, consisting of Senators Wolfe, Wright and Leavitt, was made up of Senators who had voted on one side of the question at issue.[250]

Before appointing the committee, President Wallace gave a statement, which made his own position clear,

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250 See Story of the California Legislature of 1909. Incidentally, the 1911 Legislature undid the work of the 1909 Free Conference Committee in question.

and at the same time demonstrated the weakness of Juilliard's contention. He then appointed Senators Estudillo, Stetson and Thompson to represent the Senate on the Committee.[251]

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251 President Wallace's statement was as follows:

"The chair craves the indulgence of the Senate to make a statement. Uniform courtesy has characterized the relations of this Senate with its President during every day of this session.

"When it became the duty of your President to name a Conference Committee on this Local Option bill, only one Senator belonging to the majority made a suggestion regarding the make-up of the committee, and he asked that the majority be recognized, and named a Senator whom he thought would be a suitable member of that majority.

"The chair in selecting the Conference Committee did recognize the majority as suggested, and appointed one of its strongest members.

"In recognizing both sides, the chair departed from a precedent in a well established case of the session of 1909. The Direct Primary law was in question. There had been many votes in the Senate and finally the bill was ordered to a Conference Committee. It was well recognized that the Senate stood 20 to 20, but one Senator was absent and the final vote stood 20 to 19.

"The President appointed the committee entirely from the majority and gave no representation whatever to the 19, even though the 19 was a minority in the vote only but not actually so in the Senate.

"If further precedent is desired, the chair finds that in the session of 1911 (the present session), when it became the duty of the Speaker of the Assembly to appoint a Conference Committee on this very Local Option measure, he selected one from the majority and two from the minority. And the chair has yet to hear of any fault found with the Speaker's action.

"In the government of the State of California, there are two branches of the Legislature, the Governor of the State, the Lieutenant-Governor and other officers. In the election campaign ending last November, and resulting in the election of these State officers, there was injected into the contest for Lieutenant-Governor, not in any degree by your President but wholly by those organizations and interests that were opposed to him, this very liquor question. And in the last days of the campaign this was made the pre-eminent issue before the people of this State in relation to the election of Lieutenant-Governor. Those who brought this issue before The People were defeated, and those who supported the present Lieutenant-Governor because of his well-known principles on the liquor question, and fought in every quarter of the State for him because he holds these principles, will now demand that in so far as he is to represent legislation on this question he shall while representing the whole State at least give earnest and due consideration to their well-known views. The liquor interests in injecting this issue into the campaign made it in effect a part of the platform of your President, and that without his seeking.

"In view, therefore, of all the facts in the case, and not forgetting the courteous suggestions from members of this Senate whose views differ from those of your President, I appoint on this Free Conference Committee on Senate Bill 37 (the Local Option bill) Senators Estudillo, Stetson and Thompson."

Speaker Hewitt named Assemblymen Cronin, Randall and Rosendale as the Assembly members of the Committee.

The Committee at its first meeting stood two for the township unit, Stetson and Rosendale, and four for the county unit, Estudillo, Thompson, Randall and Cronin.

After several fruitless sessions, Senator Thompson offered a compromise, that both the county and the township unit be discarded, and the Supervisorial district be made the unit of prohibition.

Senator Estudillo and Assemblymen Randall and Cronin, all of whom were supporting the county unit, signified their willingness to accept this compromise. But Senator Stetson and Assemblyman Rosendale, who were insisting upon the township unit, refused to accept Senator Thompson's suggestion, although both Senator Stetson and Mr. Rosendale assured their colleagues that rather than see the Local Option bill defeated, they would, on the floor of their respective Houses, vote for such report as the majority of the Committee might agree upon, making the Supervisorial district the unit of prohibition.

The Committee finally reported to Senate and Assembly recommending that the unit of prohibition be made the Supervisorial district.

The report was signed "Estudillo, Thompson, Senate Committee on Free Conference; Randall, Cronin, Assembly Committee on Free Conference. We do not concur, Rosendale, Stetson."

Members of saloon lobby thereupon proceeded to resist the Supervisorial district unit, as strongly as they

had resisted the township unit. It was quite evident, however, that the report would be overwhelmingly adopted in the Assembly, and that the necessary twenty-one votes in the Senate for its adoption by that body were assured.[252]

It soon developed, however, that the opponents of the bill, with Wolfe at their head in the Senate and Schmitt at their head in the Assembly, would oppose a vote being taken on the report on the ground that, inasmuch as the report was not unanimous, the incident of the Local Option bill had been closed by the failure of the members of the Committee to agree. The position taken by the opposition was that the measure had, because of this lack of unanimity, been defeated in the Free Conference Committee. They based their contention upon Rule 14 of the Senate and Assembly Joint Rules, which provided that "the report of the Committee on Free Conference shall not be subject to amendment in either House, and in case of non-agreement [253] no further proceedings shall be had."

The opposition contended that the section meant

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252 Senator Stetson, in the Committee on Free Conference, on the night that the Supervisorial District unit was decided upon, estimated that twenty-one Senators would vote for it, that fourteen were absolutely against it, while five were doubtful. Senator Stetson's estimate was as follows:

For the Supervisorial District unit—Avey, Bell, Birdsall, Black, Boynton, Campbell, Cartwright, Cutten, Estudillo, Gates, Hewitt, Holohan, Larkins, Roseberry, Rush, Shanahan, Stetson, Strobridge, Thompson, Walker, Wright—21.

Against Supervisorial District unit—Beban, Bryant, Caminetti, Cassidy, Curtin, Finn, Hans, Hare, Martinelli, Regan, Sanford, Tyrrell, Welch, Wolfe—14.

Doubtful—Bills, Burnett, Hurd, Juilliard, Lewis—5.

253 That Senator Stetson or Assemblyman Rosendale, whose non-concurring signatures made this move possible, had any part in this technical play to defeat the Local Option bill, no informed person for a moment believes. The two gentlemen, when they heard of the opposition's new move, expressed willingness to concur with the majority of the committee in recommending the Supervisorial District unit. Both men voted for the adoption of the committee's report.

unanimous agreement; that failure of unanimous agreement meant non-agreement. As the Committee on Free Conference had failed of unanimous agreement, the opponents of the measure contended there was a non-agreement, and that under the rules no further proceedings could be had.[254]

Senator Wolfe raised this point in the Senate and Mr. Schmitt in the Lower House. In both Senate and Assembly the technical point was overruled, both President Wallace[255] and Speaker Hewitt holding with the

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254 In raising this point, Senator Wolfe, a thorough parliamentarian, apparently lost sight of the fact that Cushing, Reed and Hinds, accepted authorities on the subject, are practically agreed that a Committee of Conference is not a heterogeneous body, acting as one committee, but two committees, each of which acts by a majority. The same rules necessarily govern in a Free Conference Committee. Reed holds that when two legislative bodies have a conference, it is a free conference.

255 President Wallace's opinion was particularly exhaustive. He said:

"The joint rules of the Senate and Assembly do not provide for 'unanimous' agreement of the Committees of Free Conference. If one vote in a committee could determine all action, the Legislature would thus abdicate its legislative functions in favor of one member.

"That part of Section 14, of the Joint Rules which reads: 'And in case of non-agreement no further proceedings shall be had,' was designed solely to limit the number of Free Conference Committee to one.

"Cushing's Law and Practice of Legislative Assemblies, Sec. 2267, says:

" 'A Committee of Conference is not a heterogeneous body, acting as one committee, but two committees, each of which acts by a majority.'

" 'Reed's Rules,' Sec. 242, say: 'When two legislative bodies in this country have a conference, it is a free conference.' Bearing this statement in mind, Sec. 244 says: 'The report of a Conference Committee must be in writing and signed by those agreeing thereto, and must have the signatures of a majority of the representatives of each House.'

" 'Hinds' Precedents' is an authoritative American work on Parliamentary Law. It gives numerous instances of a Conference Committee report being received and acted on by the House of Representatives, even when such report is signed by a minority, with the notation 'I dissent.'

"Cushing says, in Sec. 839: 'In a free conference, they are at liberty, and it is their duty, to urge their own arguments, to offer and combat objections, and, in short, to attempt, by personal persuasion and argument to effect an agreement between the two Houses.'

"Obviously it would be absurd to hamper the execution of that duty by a requirement of unanimous agreement in a report."

authorities that agreement of a majority of each of the two groups (Senate and Assembly) which constituted the committee was an agreement under the rules.

The opponents of the measure in the Assembly accepted this ruling as their final defeat. The Assembly adopted the report of the Committee on Free Conference by a vote of 51 to 21.[256]

But the defeated opponents of the bill yielded less gracefully in the Senate.

In the Senate, Wolfe, having lost his principal point of order, raised the second point that the Supervisorial district provision of the bill was "entirely unconstitutional," for the reason that some counties of the State have no Supervisorial districts.

In ruling against Wolfe's second objection, President Wallace took occasion to remind Wolfe that the three Senate members of the Committee are lawyers, and quite competent to pass upon the constitutionality of the measure.

Senator Cutten raised a laugh by asking Wolfe whether he desired a more stringent Local Option bill.

But it remained for Senator Estudillo to answer Wolfe's argument most effectively.

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256 The Assembly vote on the report of the Committee on Free Conference was as follows:

For the report—Beckett, Benedict, Bennink, Bliss, Bohnett, Brown, Butler, Cattell, Chandler, Clark, Cogswell, Cronin, Crosby, Farwell, Flint, Freeman, Gaylord, Griffiths, Guill, Hamilton, Harlan, Held, Hewitt, Hinkle, Hinshaw, Jasper, Jones, Joel, Judson, Kehoe, Lamb, Lynch, Lyon of Los Angeles, Maher, McGowen, Mendenhall, Mott, Polsley, Preisker, Randall, Rogers of Alameda, Rosendale, Slater, Smith, Stevenot, Sutherland, Telfer, Williams, Wilson, Wylie, and Young—51.

Against the report—Beatty, Callaghan, Coghlan, Cunningham, Denegri, Feeley, Fitzgerald, Gerdes, Hayes, Kennedy, Lyon of San Francisco, Malone, McDonald, Mullally, Nolan, Rimlinger, Rodgers of San Francisco, Rutherford, Ryan, Sbragia, and Schmitt—21.

"Senator Wolfe," said Estudillo, "has shown a strange solicitude for this bill. Why does Senator Wolfe have such concern for its constitutionality? If the measure is unconstitutional, it will not hurt Senator Wolfe's friends. The Liquor Interests will not be hurt if the bill be found unconstitutional. Why this concern about its constitutionality?

"These men are not concerned about the bill's constitutionality. They have raised the point of constitutionality to defeat the bill. I understand that last night orders went out to fight the bill on the floor of this Senate."

"You do not mean to say that I received orders," broke in Wolfe.

"Oh, no, Senator Wolfe," replied Estudillo with a smile, "of course I do not mean you."

"Some reverend gentlemen," went on Estudillo, after the laughter subsided, "have been accused of lobbying for this bill. These men are citizens of this State. They have as much right to speak for this bill, as representatives of the Royal Arch or the liquor interests have to speak against it. When the measure was pending before the Assembly, I saw representatives of the liquor interests prancing about the floor against it."

The Senate adopted the report of the Committee in Free Conference by a vote of 28 to 12.[257]

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257 The Senate vote on the adoption of the report of the Committee on Free Conference was as follows:

For the report—Avey, Bell, Birdsall, Black, Boynton, Campbell, Cartwright, Curtin, Cutten, Estudillo, Gates, Hewitt, Holohan, Hurd, Juilliard, Larkins, Lewis, Martinelli, Roseberry, Rush, Sanford, Shanahan, Stetson, Strobridge, Thompson, Tyrrell, Walker, and Wright—28.

Against the report—Beban, Bills, Bryant, Burnett, Caminetti, Cassidy, Finn, Hans, Hare, Regan, Welch, and Wolfe—12.

The measure then went to Governor Johnson for his approval.

The proponents of Local Option declare the bill as it finally passed to be a most satisfactory measure, holding that in effect the Supervisorial district unit does not differ materially from the county unit.

CHAPTER XVIII.

Labor and the Legislature.[258]

So-called Labor Measures Were Given Consideration Which Under Machine Rule Had Been Dodged or Denied.

The report of the California State Federation of Labor [259] on the measures opposed and supported by La-

258 In addition to the labor measures considered in this and the five following chapters, the following measures which had the support of the Labor representatives at Sacramento became laws.

A. B. 388 (McDonald) for the better protection of the Union Label.

A. B. 547 (Ryan) empowering the Labor Commissioner to enforce the Upholsterers' Shoddy law.

A. B. 240 (Griffin) providing that all children within certain age limits must attend school.

A. B. 1305 (Young) defining duties of probation officers.

S. B. 31 (Welch) providing for local inspection of weights and measures. State inspection is provided in Senate Constitutional Amendment No. 2, which was submitted to the people for ratification.

A. B. 278 (Kehoe) changing the policy of the old law so that contractors and material men are given a direct lien upon the property.

A. B. 836 (Coghlan) compelling contractors and builders to provide for temporary floors in buildings more than two stories high, in course of construction.

A. B. 1328 (Clark) providing that physicians treating patients suffering from occupational diseases shall notify the State Board of Health.

A. B. 821 (Bliss) appropriating $5000 to be used by the State Board of Health in investigating the prevalence of tuberculosis.

S. B. 1221 (Burnett) providing improved conditions in tenement houses.

The votes by which the principal measures considered in this chapter were passed or defeated will be found in the appendix, in the table on Labor votes.

259 The report is signed by D. D. Sullivan, president, and Paul Scharrenberg, secretary-treasurer, California State Federation of Labor; L. B. Leavitt, Theo. Johnson, legislative agents.

bor representatives at the 1911 California Legislature, shows that of forty-nine bills advocated by Labor, thirty-nine were passed. Among the measures which had the support of Labor were the amendments to the 1909 Direct

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California State Federation of Labor; Eugene A. Clancy, legislative agent, State Building Trades Council of California.

The Coast Seamen's Journal, one of the ablest Union Labor journals published, in commenting on this report in its issue of April 19, 1911, says: "The legislative report of the California State Federation of Labor, published in this issue, is the most remarkable, and at the same time most gratifying, not to say astonishing, document of the kind ever issued by a labor organization. Thirty-nine bills passed out of a possible forty-nine bills!

"Mark the contrast with the usual report on labor legislation. Usually the labor movement considers itself fortunate when it can record an even break as between the number of bills passed and defeated. Quite frequently the labor movement is compelled to make the best of a mere scrap of legislation—to magnify the importance of one or two bills passed out of pity or for mere decency's sake. Not infrequently we are forced to acknowledge utter and absolute failure.

"Such has been the experience of California in the past, and such is the experience of many other States up to the present time. The record of the recent Legislature of California is epochal, even revolutionary. That record will long stand as an example to other legislative bodies and an inspiration to the labor movement of the whole country.

"The conditions making for the present success are easily seen and understood. California throughout her history has been ruled and ridden by a gigantic and greedy corporation, the Southern Pacific Railroad. The State Legislature, even the smallest town council, has been but the mouthpiece of the 'S. P.,' registering the will of that corporation. In a word, the State was but a plantation, the people were so many 'hands,' and the bosses and officials so many overseers.

"This situation reached its logical climax in the concentration of public opinion upon a platform which, as interpreted by the leader of the anti-Railroad forces, meant simply 'kick the Southern Pacific out of politics.' This accomplished, everything else would be easy of achievement. Anything less than this would result merely in Dead Sea fruit—in utter failure.

"Hiram W. Johnson was elected Governor and with him was elected a Legislature pledged to the policy he so clearly enunciated. The Southern Pacific Railroad was 'kicked out of politics.' The Railroad lobby was no longer a dominant force at Sacramento. The members of the Legislature were free to keep their pledges to the people, to vote as their consciences dictated. If they needed advice they knew where to look for it. Governor Johnson was not only against the Railroad; he was for the people; he was against the Railroad **because** he was for the people. The Railroad was out and the people were in. The success of labor in the recent Legislature of California lies in the success of the people of the State in ridding themselves of the domination of their chief and only enemy—a great public-service corporation. We congratulate the people!"

Primary law, which give The People of California a practical State-wide vote for United States Senator; the Initiative and Referendum amendment, and the Boynton bill, which restored the Australian ballot to its original simplicity and effectiveness, and took the Judiciary out of politics.[260] In according support to such fundamental reforms, the Labor representatives at Sacramento demonstrated that intelligent Labor leaders are alive to the fact

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260 It is interesting to note that with possibly one exception these reforms would have been realized in 1909, had it not been for the adverse votes of Senators and Assemblymen who had been elected with the endorsement of the so-called Union Labor Party.

Thus the plan for a "state-wide vote" for United States Senator, as contained in the original 1909 Direct Primary bill, which, while not so good as the Oregon plan, would at least have given The People a voice in the selection of Federal Senators, was defeated in the Assembly by one vote, while a single vote would have carried it in the Senate. In the Senate, six members who had Union Labor endorsements—Finn, Hare, Hartman, Reilly, Welch and Wolfe—voted against the State-wide plan. In the Assembly, twelve members who had been nominated by the Union Labor Party, voted against the State-wide plan. They were Beatty, Behan, Black, Coghlan, Cullen, Feeley, Johnston of Contra Costa, Macauley, Nelson, O'Neil, Perine and Pugh. Had only one of these Assemblymen voted for the State-wide plan, the so-called machine amendments to the Direct Primary bill would have been defeated, and The People of California given a State-wide vote for United States Senator.

At the 1909 session, the Initiative amendment was defeated in the Senate. Senator Wolfe led the fight against it. He and Senator Hartman voted against it. Senator Finn was not present to vote.

The 1909 measure to remove the Party Circle from the election ballot passed the Senate but was defeated in the Assembly, that body by a vote of 35 to 36 denying the measure second reading. The change of one negative vote would have sent the measure to its final passage. Five Union Labor members—Behan, Cullen, Feeley, Macauley, Perine and Silver—voted against the measure; Johnston and Pugh did not vote.

The 1909 Judicial Column bill, to take the Judiciary out of politics, passed the Senate, but was defeated in the Assembly, 35 members voting for it and 29 against, 41 votes being necessary for its passage. Six more affirmative votes would have passed it. Seven Union Labor members—Beban, Black, Coghlan, Cullen, Feeley, Macauley and Silver—voted against this bill. Four Union Labor members—Johnston, O'Neil, Perine and Pugh—did not vote upon it.

that industrial reforms worth while depend upon political reforms.

Governor Johnson dealt with the so-called labor measures in the same broad spirit that governed his course in the whole field of legislation. He vetoed certain labor measures which had the insistent support of the Labor organizations, because he held them to be unnecessary or bad,[261] while, because he deemed them just and nec-

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261 The so-called Bake Shop bill (S. B. 673), for example, and the Blacklisting bill (A. B. 604). In his message vetoing this last-named measure, Governor Johnson said:

"To the Assembly of the State of California:

"I return herewith to you, without my approval, Assembly Bill 604, entitled: 'An Act to amend the Penal Code of the State of California by adding a new section thereto to be numbered 653e, relating to blacklisting.'

"My reasons for vetoing this bill are that its provisions are vague, uncertain and indefinite, and that while prohibiting some things that we might desire to prohibit, it prohibits others we do not wish to prohibit.

"Reading the Act, omitting superfluous words, the first inhibition contained in it is, that no company shall blacklist or require a letter of relinquishment. I inquired of the author of the bill what a 'letter of relinquishment' was, and he was unable to tell me. I have sought the same information from various sources, and but one gentleman has been able to define this term and he was quite uncertain of his definition. If 'letter of relinquishment' has some specific and definite meaning, it has not as yet required a legal signification, and should be described in some fashion so that the phrase may be easily understood. The next inhibition in the section is contained in the words, that no company, etc., shall publish any employee. The most astute attorneys will be somewhat at a loss accurately to determine what constitutes publication of one individual by another. It is possible we may accept the legal definition of 'publish' as applied to libel, and it might be held that when a person, firm or corporation is prohibited from publishing an employee, the meaning intended is that nothing shall be uttered or circulated concerning that employee. At any rate, the vagueness of the expression renders it so uncertain as to be of doubtful validity.

"Again, the Act makes it an offense for any person (if 'publish' be construed in accordance with its legal significance) to impart to another truthful information concerning a discharged employee with intent to prevent that employee from securing similar employment. I doubt very much if it was the intention of the Legislature to make it a crime for 'A' who had discharged for theft, or incompetency, or other righteous cause, his employee, to say to 'B,' if 'B' were about to engage that employee, that the employee was dishonest or incompetent. There are in the United States many statutes designed to reach blacklisting. In most of those statutes there is a saving clause pro-

essary, he signed labor bills which had the opposition of some of his most effective supporters.

Measures, recognized to be just, the enactment of which at previous sessions had been prevented, generally by trickery and indirection, passed both houses and were approved by the Governor.[262]

Notable among these was the so-called "Full Crew" law.

This measure provides that railroad trains must be properly manned, that is to say, each train must carry a

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viding for a truthful declaration respecting a discharged employee, and in any statute our Legislature might enact, I think such a proviso should be contained. I may add that this particular law is copied from the Oklahoma statute, but I have been unable to find any construction of that statute, and though it has the sanction of Oklahoma, I yet believe it open to the objections I have presented. I have no objection to prohibiting blacklisting; but if it is to be done, I wish it accomplished by an Act direct, certain and plain in its terms which cannot be defeated by judicial construction, and which would preserve as well the right to make a truthful disclosure of the reasons for the discharge of a dishonest or incompetent employee.

"For the reasons I have stated, I have vetoed the bill."

262 Governor Johnson's attitude was generally appreciated. The Building Trades Council of Santa Clara County, for example, in March, adopted, and forwarded the following resolutions to Sacramento:

"To the Senate of the State of California:

"Whereas, The thirty-ninth session of the California Legislature, the most remarkable in the history of this State, from the standpoint of the laboring people, is now drawing to a close, and

"Whereas, This administration has demonstrated by the laws that they have enacted that they are true representatives of the people and have devoted their entire time to the interests and welfare of humanity, while previous administrations, in their efforts to do the bidding of corporations, have forgotten their pledges to the people, therefore, be it

"Resolved, By the Building Trades Council of Santa Clara County, representing its twenty-eight affiliated unions, in regular session assembled, this 23rd day of March, 1911, that we commend Governor Hiram Johnson, the Senate and Assembly for their great achievements, and congratulate the people of the State for electing representatives who have fulfilled their promise and have shown the world that California is no longer corporation-ridden; be it further

"Resolved, That a copy of these resolutions be given to the press and a copy forwarded to Governor Johnson, the California Senate and Assembly."

full crew of conductor and brakemen necessary for its safe operation. Not only does this law protect the train hands but the traveling public.[263] Nevertheless, the enactment of such legislation had long been successfully resisted. When at the 1909 session the passage of a Full Crew law became imperative, by one of those frequent "accidents" of legislation, the bill was erroneously amended, and on this ground vetoed by Governor Gillett.[264]

But no such "accident" attended the passage of the Full Crew bill at the 1911 session, and the measure became a law.

A second railroad measure, intended to protect the traveling public as well as railroad employees, was introduced in the Assembly by Williams. This measure provides that railroad employees shall not remain on duty for a longer period than sixteen consecutive hours. This measure also passed both Houses and was approved by the Governor.

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263 "The whole purpose of this bill," said Senator Boynton before the Assembly Committee on Common Carriers, "is to protect life and limb. It is for the safety of the people who travel on trains that extra brakemen are desired.

"I do not believe that the railroad companies who are represented here as opposing this measure are doing so because of the additional cost its provisions would entail. Rather, I believe, that the railroads are objecting solely because the idea of regulation is distasteful to them. They do not want the people to tell them what they shall or shall not do in the conduct of trains.

"The arguments of the railroad representatives themselves show that there is need of regulation in this respect. They all admit that a greater measure of safety attends a train which is fully manned than one undermanned. Gentlemen, this is a good measure. It is needed in California and it is the only means by which the railroads will use full crews in the running of their trains. I believe this bill is of greater interest and moment to the public than to railroad employees. It directly affects the safety of all who ride on trains."

264 See Story of the California Legislature of 1909, page 153.

The so-called "Pay-Check bill"[265] was another important labor measure which the 1911 Legislature enacted into law.

The purpose of this bill was to compel regular payment of laborers in money or its equivalent.

Under the system which had been in vogue in California, employers of unskilled labor had made a practice of issuing "pay checks" to their men, redeemable at the pleasure of the employer if redeemed at all.

The evil had been given sensational publicity at San Francisco through the murder of a woman cashier employed by the contracting firm of Gray Bros.

A laborer by the name of Cunningham, who had been employed by Gray Brothers, had a "pay check" issued to him in lieu of wages. Cunningham had tried for weeks to realize on his check. Finally, suffering for the necessities of life, he imagined that the woman cashier who put him off from day to day, was responsible for his trouble. Acting under this insane conception, Cunningham went to Gray Brothers' place of business, and for the last time demanded that his "pay check" be honored. Upon the cashier's refusal, he shot the woman dead.

As an immediate result of the notoriety which this in-

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265 The "pay check" bill as amended in the Senate, read as follows: "No person, firm, or corporation engaged in any business or enterprise within this State shall issue, in payment of or as an evidence of indebtedness for wages due an employee, any order, check, memorandum or other acknowledgment of indebtedness, unless the same is negotiable, and is payable upon demand without discount in cash at some bank or other established place of business in the State. provided, however, that the provisions of this act shall not apply to counties, cities and counties, municipal corporations, quasi municipal corporations, or school districts organized and existing under the laws of this State."

cident had given the "pay check" evil, no less than four anti-pay check bills were introduced, three in the Assembly, with Mullally, Joel and Stuckenbruck as their authors, and one in the Senate by Sanford. The Sanford bill was eventually decided upon as the best, and finally passed.

The measure was, however, made subject of an extended debate[266] in the Senate, a debate that was well peppered with personalities. But when the bill came to final passage, not a vote was cast against it in either House. The measure received the approval of Governor Johnson.

Another measure, which under the machine order had failed to become a law, but which at the 1911 session was promptly enacted, was the so-called "Sailors' Enticement" bill, introduced in the Senate by Wolfe.

This measure repealed Section 644 of the penal code, enacted in 1872, which made it a misdemeanor for any

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266 It was during the debate over this measure that Senator Wolfe of San Francisco gave notice that he proposed to keep tab on the "reformers" on labor issues.

"I am going to keep check upon you reformers," shouted Wolfe, "on labor measures, and see whether your reform is skin deep."

The writer is not able to state whether or not Senator Wolfe kept check. But that is unimportant.

The fact remains, however, that during State administrations dominated by "performers," reasonable labor legislation failed of final enactment. If such measures were not defeated in Senate or Assembly, there was the Governor's veto to block them. It remained for a progressive administration to place such measures as the "Full Crew" law, the "Pay Check" law, and other necessary "labor" laws upon the statute books; and to repeal the Sailor Enforced Servitude law.

All this is thoroughly understood and appreciated by intelligent—and sincere—labor representatives. The report on Labor Legislation at the 1911 session, issued by the California State Federation of Labor, says: "Never before has Organized Labor of our State and its representatives at the Capitol worked as harmoniously, and never was as much interest manifested and assistance rendered by our organizations and the Reform Movement generally."

person to entice a sailor to leave his ship. At the time of the passage of Section 644, the Federal law prohibited the desertion of seamen. However, in 1895, Congress passed a law granting American seamen the right to leave their vessels before the expiration of their contracts, in any port of the United States, Canada, Mexico, Newfoundland and the West Indies. The penalty of imprisonment for desertion was abolished, the deserting sailor forfeiting only his wages earned and his clothing left on board.

Since this act of Congress, as it was no longer a crime under the Federal law for a sailor to leave his ship in the waters specified, repeated efforts were made to have the California section repealed. Repealing measures actually passed the Legislature at two sessions, only to be vetoed by the Governor. At the 1911 session, the measure was not vetoed; Governor Johnson signed the bill, and the antiquated law,[267] based on the theory that breach of contract on the part of a sailor is a crime, was removed from California statute books.

Important measures affecting child labor, which at previous sessions would have been given scant consideration, became laws.

The most important of these was Assembly bill 662, introduced by Mullally, which prohibits minors under eighteen years to engage in, or conduct any business, between the hours of 10 o'clock in the evening and 5 o'clock in the morning. The principal purpose of this measure is to keep children out of dives and saloons at hours

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[267] The Federal statute which made it a crime to harbor or secrete a deserting seaman was enacted in 1790. The law was repealed in 1895.

when shamelessness runs riot. Its presentation in the Legislature and its ultimate passage, was due largely to Rev. Charles N. Lathrop of the Church of the Advent, San Francisco. Father Lathrop had photographs made of the youngsters, who as venders of papers, candies and the like, frequented the dives at all hours of the night. These photographs furnished arguments which could not be met.

A long step toward furnishing adequate protection for electrical workers was taken in the passage of Assembly bills 312 and 313. These measures were prepared along lines suggested by the workmen themselves. The measures were thoroughly considered by the committees to which they were referred. Representatives of the power companies were given long hearings, and finally compromise measures acceptable to both sides were agreed upon.[268]

The three principal successes of Labor at the 1911 session, namely, the passage of the Roseberry Employers' Liability act; the Griffin bill limiting the hours of labor for women to eight a day, and the defeat of the so-called "Compulsory Arbitration" bill, will be treated in separate chapters; as will the defeat of two important measures urged by representatives of organized labor, namely, the Telfer Constitutional Amendment providing that school children shall be furnished school books free of cost, and the so-called anti-Injunction bill.

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268 The California State Federation of Labor, in its report on the work of the 1911 session, said of these bills: "California will have laws protecting the electrical workers and making their work as safe as it can be reasonably made, by standardizing all new construction and repair work after a certain date."

CHAPTER XIX.

EMPLOYERS' LIABILITY ACT.

Measure to Place Burden of Risk of Industry Upon the Industry Itself Instead of Upon Employer or Employee Adopted.

The Democratic State platform (1910) made no declaration of the party's attitude on the question of Employers' Liability legislation. The Republicans, however, declared for "an Employers' Liability act which shall put on industry the charges of its risks to human life and limb along the lines recommended by Theodore Roosevelt."

To carry out this provision of the platform, Chairman Lissner of the Republican State Central Committee appointed a committee to draw such a measure. But it developed that Senator Louis H. Roseberry of Santa Barbara had given the matter of employers' liability much study and consideration, and upon him devolved the labor of drawing the tentative measure to be presented to the Legislature. The Roseberry bill became the basis of consideration of the question of employers' liability. With one important amendment, the measure was finally enacted into law.

The situation caused by raising the question of Employers' Liability legislation, was strained from the beginning. This was due to the extreme positions taken

as to the details of the measure, although it was generally admitted that some sort of an Employers' Liability law should be enacted.

Various labor organizations instructed their representatives at Sacramento that they recommended "the passage of the Employers' Liability bill submitted by the American Federation of Labor *and none other.*"

On the other hand, some of the Progressive members of the Legislature hesitated about abrogating the doctrine of "assumed risk,"[269] and "fellow servant rule," while others, yielding these points, insisted that the doctrine of "contributory negligence"[270] be left unchanged.

With such differences, a situation rapidly developed

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269 California courts have held of the "fellow servant" and "assumed risk" rule that:

"Fellow servants are engaged in a common employment when each of them is occupied in a service of such kind that all the others in the exercise of ordinary sagacity ought to be able to foresee when accepting their employment that his negligence would probably expose them to injury.

"Mann vs. Sullivan, 126 Cal. 61.

"See Sec. 1970 C. C. An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed; nor in consequence of the negligence of another person employed by the same employer in the same general business and commonly called a fellow servant, unless he has neglected to use ordinary care in the selection of such culpable employee or fellow servant. The law recognizes no distinction growing out of the grades of employment of the respective employees, nor does it give any effect to the circumstances that the fellow servant through whose negligence the injury came was the superior of the plaintiff in the general service in which they were in common engaged."

270 As the law had been until the passage of the Roseberry act, instructions given juries by trial judges in damage cases, on contributory negligence were about as follows:

"Negligence is the omission to do something which an ordinarily prudent person would have done under the circumstances; or doing something which such a person would not have done in the same situation. It is not absolute or intrinsic, but always relates to some circumstances of time, place or person.

"An injury may be sustained either through the negligence of the plaintiff, or through the negligence of the defendant; if through the negligence of plaintiff the plaintiff cannot recover. If you find that the defendant was negligent, and that the plain-

which, for the moment, threatened the enactment of any Employers' Liability legislation at all.

Nevertheless, two important Employers' Liability measures were introduced, the Roseberry bill, and the Kehoe bill.

The Kehoe bill as originally introduced dealt with "Common Carriers by Railroads," only, and was later amended to read "railroad corporations, excluding street railroad corporations." The Kehoe bill was far more radical than the Roseberry bill, and was not seriously considered until the Roseberry measure had passed the Senate. It was then pressed for passage, and passed both houses. But it conflicted with the Roseberry bill as that measure finally passed.

The Kehoe bill did not receive the approval of the Governor.

The Roseberry bill was divided into two parts, dealing as a matter of fact, with two principles:

(1) With the principle of Employers' Liability, which places the blame for accidents in industry and the cost of them upon the employer.

(2) With the doctrine of compensation, which, re-

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tiff was also negligent, and that the plaintiff's negligence directly contributed to his injury, then plaintiff cannot recover. Such negligence on plaintiff's part is called **contributory negligence.** Contributory negligence is **no bar** where act of defendant is wilfully and wantonly done.

"Contributory negligence is such an act or omission on the part of plaintiff amounting to a want of ordinary care, as concurring or co-operating with the negligent act of defendant, was the proximate cause of the injury complained of. Unless it may be inferred from the evidence offered by plaintiff, such negligence is a matter of defense, to be proved affirmatively by the defendant, and hence the burden of proof of contributory negligence is on the defendant."

gardless of blame, places the burden of accidents upon the cost of production.[271]

The first part of the Roseberry bill, as originally introduced, dealing with Employers' Liability, dealt with the three issues that divided the several factions as follows:

(1) The doctrine of "contributory negligence" was left intact.

This was satisfactory to the conservatives, but was not acceptable to the labor representatives.

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271 Senator Roseberry in an address before the Los Angeles City Club, distinguished between the two doctrines as follows:

"Employers' Liability law merely means that the workingman shall receive his compensation by an action at law, on the theory of blame on the part of his employer. It is a liability that the employer must incur by virtue of his legal and moral responsibility; something that he must bear personally.

"The doctrine of employers' liability is harsh. It is bad. It is theoretically wrong. It forces the case into court, resulting in delays, expense, litigation, and finally makes the employer stand the loss, whether he is personally responsible or to blame.

"A compensation law, on the other hand, is framed upon the theory that, regardless of blame, it is a cost of production that must be carried over to the consumer, and, therefore, you do not seek to find who is responsible, legally or morally, for the accident, but as a matter of course, when a man is injured, he becomes entitled to compensation and payment for his injury, the same as he is entitled to a payment for his labor. It is his wage that goes on during his disability, the same as while it was a producing factor, to be carried on the books as such, in the same manner as an employer, a wise employer, carries his depreciation of the machinery on his books, and figures that he must duplicate his machinery once in every 10 or 20 years. Under this new, automatic compensation scheme he carries his liability or cost of accidents on his books and shifts it to the consumer. If the law is measured properly by a maximum and minimum rate, it becomes a clearly defined cost of production, just as certain as is his insurance,—his fire insurance; just as certain as is his depreciation in machinery is the depreciation in arms and lives of his laborers. It can be reckoned with just as much exactitude and is today carried by the insurance companies as a clearly defined commercial risk, upon which they can charge an insurance, coming down to a few cents."

(2) The doctrines of "assumed risk" and of the "fellow servant rule" were abrogated.[272]

This was in accordance with the wishes of the labor representatives, but met with opposition from conservatives.

Thus at the beginning, details of the first part of the Roseberry bill had the serious opposition of both the representatives of organized labor, and of those who were generally credited with opposing legislation which the labor representatives were demanding.

The second part of the bill was devoted to the compensation feature.

After depriving the employer, in the first part of the bill, of two important defenses in damage suits arising out of injuries suffered by employees, the second part made it optional with the employer to continue liable to suit at law, or to accept a plan of fixed compensation for those of his employees suffering accident, in lieu of any other liability whatsoever.

If he accepted the compensation plan, he was relieved of all further liability,[273] but bound to meet the fixed

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272 These provisions were made in Section I of the Roseberry bill as it was originally introduced. The section read as follows:

"In any action to recover damages for a personal injury sustained within this State by an employee while engaged in the line of his duty or the course of his employment as such, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of ordinary or reasonable care of the employer, or of any officer, agent or servant of the employer, it shall not be a defense:

"(1). That the employee either expressly or impliedly assumed the risk of the hazard complained of.

"(2). That the injury or death was caused in whole or in part by the want of ordinary or reasonable care of a fellow servant."

273 Except when the injury is caused by the personal gross negligence or wilful personal misconduct of the employer, or by reason of his violation of any statute designed for the protection of employees from bodily harm. It is then left optional with the injured employee to claim compensation under the act, or bring action for damages.

damages provided. Employees of such employers as accepted the compensation provisions of the act, were assumed to accept the plan also, unless they definitely gave notice to the contrary.

In the controversy over the bill, the second, or compensation-providing part, was left practically unchanged. The attention of the Legislature was devoted to the first part, dealing with employers' liability.

The first important move toward understanding between the labor representatives and the more conservative members of the Legislature, came with an invitation to Senator Roseberry to attend a conference of labor representatives, to discuss the disputed features of the bill. Senator Roseberry attended. The meeting was large, practically every branch of labor being represented.

Roseberry was urged to accept amendments to his bill to change the doctrine of contributory negligence, to the present Federal rule of damages as enacted in 1908.[274]

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274 The Review of Labor Legislation of 1909, published at Madison, Wis., by the American Association for Labor Legislation, says of the Federal Act of 1908:

"The Federal act of April 22, 1908, makes a railroad company liable for an employee's injury or death resulting in whole or in part from the negligence of any of its officers, agents or employees. It also provides that contributory negligence shall not bar a recovery when it is slight and the negligence of the employer gross in comparison, but that the damages shall be diminished by the jury in proportion to the employee's negligence. Finally, it provides that no employee can be held guilty of contributory negligence or to have assumed the risk where violation of a statute enacted for safety contributed to the injury. The law applies generally to all common carriers, while operating within the Territories, the District of Columbia and other possessions of the United States. In its application to interstate commerce, however, the statute is explicitly limited; a former statute passed in 1906 was declared unconstitutional on the ground of its too general application. The law of 1908 reads: 'Every common carrier by railroad, while engaging in commerce between any of the several States,' etc., 'shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce,' " etc.

This he refused to do, contending that his bill, even with the doctrine of contributory negligence left intact, was sufficiently drastic. Finally, however, Roseberry consented to have the question brought out before the Committee on Corporations, to which the bill had been referred.

In pursuance of this understanding, Senator Welch introduced an amendment to the bill, to modify the doctrine of contributory negligence to the Federal rule of 1908.

The whole contest over the bill shifted to this point. A compromise was finally reached by which the "doctrine of comparative negligence"[275] was substituted for contributory negligence.

With the adoption of this amendment, the labor representatives got behind the bill, but there was still more or less opposition to details from those who questioned the advisability of abrogating the doctrine of "assumed risk" and "fellow servant rule," or who regarded the measure as drastic in some other of its details.

When the measure came up for final passage in the Senate, Senator Larkins offered amendments that retained some of the features of the "fellow servant rule," and excluded individual employers of labor from the definition of "employers" under the act.

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275 Under the rule of "comparative negligence" the jury, in theory at least, weighs between the litigants before it who is most to blame for the accident, and the man found most blameable sustains the shock. If it can be shown that the employer was more responsible for the accident, by virtue of his omission or his negligence, he must stand the burden of the accident. If the employer can prove that the employee was more negligent then the employee must bear the shock of the accident. That is the doctrine of comparative negligence—balance of fault.

The first[276] of these amendments was defeated by a vote of 3 to 29, only Larkins, Strobridge and Wright voting for it. The second amendment was defeated by a vote of 2 to 30, only Avey and Larkins voting in the affirmative.[277]

The bill was then put upon its final passage, and passed without a dissenting vote.[278]

Nor was any vote cast against the measure in the Assembly, where 56 members voted for it.[279]

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276 The amendment which substituted "comparative negligence" for "contributory negligence" read as follows: "The fact that such employee may have been guilty of contributory negligence shall not bar a recovery therein where his contributory negligence was slight and that of the employer was gross, in comparison, but the damages may be diminished by the jury in proportion to the amount of negligence attributable to such employee, and it shall be conclusively presumed that such employee was not guilty of contributory negligence in any case where the violation of any statute enacted for the safety of employees contributed to such employee's injury."

277 This proposed amendment read as follows: "except that an employer in any action may show in all cases where laborers shall be employed in business not hazardous in character that no act or omission of such employer caused or tended to cause such injury, and in such cases an employer shall not be responsible for any damages caused by the want of ordinary or reasonable care of a fellow servant, when such employer does not cause or contribute to such injury by any act or omission upon his part."

Larkins argued very earnestly for his amendment stating that it was for the protection of the employer of small means and principally to help the farmer.

Senator Roseberry, author of the measure, declared that if the amendment were tacked on to the bill the effect would be ruined as it would always be easy for an employer to dodge behind a "fellow servant."

278 The Senate vote on the Roseberry Employers' Liability act was as follows:

For the bill—Avey, Beban, Bell, Bills, Birdsall, Black, Boynton, Bryant, Burnett, Caminetti, Campbell, Cartwright, Cassidy, Cutten, Estudillo, Finn, Gates, Hare, Hewitt, Holohan, Hurd, Juilliard, Larkins, Lewis, Martinelli, Regan, Roseberry, Rush, Shanahan, Strobridge, Thompson, Tyrrell, Walker, Welch, Wolfe, and Wright—36.

Against the bill—None.

279 The Assembly vote on the Roseberry Employers' Liability bill was as follows:

For the bill—Beatty, Beckett, Benedict, Bennink, Bishop, Brown, Butler, Clark, Coghlan, Cronin, Cunningham, Denegri,

Of this bill, the labor leaders who were instrumental in securing its passage, in their report on the work of the 1911 Legislature said:

"This law, in its operation, will undoubtedly have a more widely diffused and beneficial effect upon labor than any other measure enacted."

The failure of the State Constitution to provide definitely for employers' liability and workmen's compensation legislation, led to the introduction and adoption of a constitutional amendment—Senate Amendment No. 32.[280]

Farwell, Feeley, Flint, Freeman, Gaylord, Griffin of Modesto, Guill, Hamilton, Hayes, Held, Hewitt, Hinkle, Joel, Judson, Kehoe, Kennedy, Lamb, Lyon of Los Angeles, Lyon of San Francisco, Malone, March, McDonald, McGowen, Mullally, Polsley, Preisker, Randall, Rimlinger, Rodgers of San Francisco, Rogers of Alameda, Rosendale, Rutherford, Ryan, Sbragia, Schmitt, Slater, Smith, Stevenot, Stuckenbruck, Sutherland, Telfer, Tibbits, Walker, Wilson—56.

Against the bill—None.

280 Senate Constitutional Amendment No. 32, authorizing employers' liability legislation, is in full as follows:

"The Legislature may by approprite legislation create and enforce a liability on the part of all employers to compensate their employees for any injury incurred by the said employees in the course of their employment irrespective of the fault of either party. The Legislature may provide for the settlement of any disputes arising under the legislation contemplated by this section, by arbitration, by an industrial accident board, and by the courts, or either of these agencies, anything in this Constitution to the contrary notwithstanding."

The vote on this amendment was as follows:

In the Senate: For the amendment—Avey, Bell, Bills, Birdsall, Black, Boynton, Bryant, Burnett, Caminetti, Campbell, Gates, Hewitt, Holohan, Hurd, Juilliard, Larkins, Lewis, Martinelli, Roseberry, Rush, Sanford, Shanahan, Strobridge, Tyrrell, Walker, Welch, and Wolfe—27.

Against the amendment—None.

In the Assembly: For the amendment—Beatty, Beckett, Bennink, Bishop, Bliss, Bohnett, Brown, Butler, Clark, Coghlan, Cronin, Cunningham, Denegri, Farwell, Feeley, Flint, Freeman, Gaylord, Griffin of Modesto, Griffiths, Guill, Hall, Hamilton, Harlan, Hayes, Held, Hewitt, Hinkle, Hinshaw, Joel, Judson, Kehoe, Kennedy, Lamb, Maher, Malone, McDonald, McGowen, Mott, Preisker, Rogers of Alameda, Rosendale, Rutherford, Ryan, Sbragia, Schmitt, Slater, Smith, Stevenot, Telfer, Tibbits, Walsh, Wilson, Wyllie—54.

Against the amendment—Cattell, Chandler, and Cogswell—3.

The amendment was adopted in the Senate by a vote of 27 to 0; and in the Assembly by a vote of 54 to 3, Assemblymen Cattell, Chandler and Cogswell voting against it.

CHAPTER XX.

WOMAN'S EIGHT-HOUR BILL.

Measure to Limit the Hours of Labor of Women to Eight Passed After One of the Most Notable Contests of the Session.

In the summer of 1910, a number of San Francisco women wage earners met on business connected with the Women's Union Label League. Among those in attendance was Miss Maud Younger, a woman who is devoting her time and her fortune to improving the conditions under which wage-earning women labor. It was suggested that an effort be made to secure the passage of an eight-hour law for California women, a law that should limit the hours women may labor for wages to eight a day, or forty-eight a week.

Miss Younger became interested, and from that hour until March 22, 1911, when Governor Johnson signed the Woman's Eight-Hour law, Miss Younger devoted her days and her nights to this cause. Her work took her through some of the most exciting scenes of the 1911 session.[281]

The question of an eight-hour day for women was presented at the annual convention of the State Federa-

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281 The rule against lobbying while the houses were in session was strictly enforced. Miss Younger's efforts in behalf of the Eight-Hour bill had earned her the name of lobbyist. Having business with Senator Caminetti one forenoon, she ventured on the floor of the Senate while that body was in session. Her

tion of Labor, held at Los Angeles Oct. 3-7, 1910. As a result, an eight-hour working law for women was one of the acts which the legislative agents sent to Sacramento by the California State Federation of Labor, were instructed to urge.

The bill prepared as a result of this work, which originated with the working women themselves, was on January 10, introduced by Senator Benj. F. Rush of Napa and Solano.[282]

But while the women wage earners of California were planning for legislative consideration of an eight-hour work day for women, a similar movement, entirely independent of them, was started in Stanislaus County. The Stanislaus Democrats, in their county platform, demanded "the enactment of a state law limiting the hours of women in shops, factories and stores to 50 hours per week or less," and pledged their nominees for legislative office to vote to bring about the reform.

Thomas F. Griffin, Democratic nominee for the

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presence was observed and objection made to lobbyists being permitted on the floor.

When Caminetti understood that Miss Younger was the "lobbyist" referred to, he became furious even for him. She started to leave the room, but Caminetti stopped her. At the close of his denunciation of the objectors he announced:

"This young woman is assisting me in my work. She is not a lobbyist; she is acting as my clerk. She will not leave my desk."

Still was objection made.

"Then," thundered Caminetti, "I'll leave the chamber myself, for it is necessary that I have the assistance which she is giving me."

Miss Younger remained.

282 The prohibitive clause of the Rush bill (S. B. 223) read as follows:

"That no female shall be employed in any manufacturing, mercantile establishment, laundry, hotel, restaurant, apartment house, workshop, place of amusement, or any other [industrial] establishment in this State more than eight hours in any one day of twenty-four hours nor more than forty-eight hours in any one week of six calendar days."

Assembly from the Stanislaus district, was heartily in accord with the movement. Upon his election, he proceeded to draw a bill to accord with the platform pledge. But decisions upholding a shorter work day than ten hours could not be found. Griffin accordingly drew a model ten-hour law for women.[283] This bill, Griffin, acting entirely independent of Rush, introduced in the Assembly on the day that the Rush bill was introduced in the Senate.

The day following the introduction of the Rush and the Griffin bills, still a third measure to limit the hours of women workers was introduced. This measure was presented by Assemblyman Callahan, and limited the hours that a female might work for wages to nine a day.[284]

Thus, from three independent sources, measures to limit the hours that women may labor for hire were introduced during the first days of the session.

It developed immediately that a strong sentiment prevailed for the passage of not only a law limiting the hours

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283 The prohibitive clause in the Griffin bill, as it was originally introduced, read as follows:

"No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in this State more than ten hours during any one day or more than sixty hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than ten hours during the twenty-four hours of one day, or sixty hours during any one week."

284 The prohibitive clause of the Callahan bill read:

"That no female shall be employed in any mechanical establishment, or factory, or laundry, or workshop, or restaurant, or hotel, or office, or other place of labor, in this State, more than nine hours during any one day. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than nine hours during the twenty-four hours of any day."

of female labor, but to fix the hours at eight a day as the maximum.

The Senate Committee on Labor and Capital reported the Rush bill within ten days, recommending its passage as amended. The eight-hour provision was left intact, the principal amendment being an exemption from the provisions of the bill of women engaged in harvesting, curing or drying fruit or vegetables. The Senate adopted this amendment and prepared to pass the bill.

In the meantime, it developed that the Assembly Committee on Capital and Labor, tó which the Griffin ten-hour and the Callahan nine-hour bills had been referred, favored the passage of an eight-hour bill. The proponents of such legislation held a consultation, and decided that the Griffin bill was the best of the three measures. It was decided to amend the Griffin measure to make it an eight-hour measure and unite on its passage. Following this plan, the Rush bill was withdrawn by its author, the day after the passage of the Griffin bill in the Assembly. The Callahan bill remained in committee until March 25, when it was withdrawn by its author.

The Assembly committee made two important amendments to the Griffin bill. First, the measure was made an eight-hour instead of a ten-hour bill; and, secondly, the fruit and vegetable industries were excluded from its provisions,[285] as had been done in the case of the Rush

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285 This amendment to the Griffin bill read as follows:

"Provided, however, that the provisions of this section in relation to the hours of employment shall not apply to nor affect the harvesting, curing, canning, or drying of any variety of perishable fruit or vegetable."

bill. There was much opposition to this amendment, but those who urged it insisted that women who work in the fruit harvest are employed only during the summer months. On this showing, the amendment was accepted, both in the Committee and by the Assembly.

When the bill came up for final passage in the Assembly, Bishop offered an amendment to modify the measure's provisions in the case of women employed in laundries, and dyeing and cleaning establishments.[286] But Bishop's amendment was defeated, as was his second proposed amendment fixing the date for the bill to go into force at July 1, 1911.

An amendment by Farwell to include "packing" in the list of fruit and vegetable industries where women could be employed more than eight hours a day was defeated also, as was a motion by Freeman to have the bill referred to the Judiciary Committee.

After these various obstructions had been cleared away, the bill was passed by a vote of 72 to 0.[287]

Up to the time of the passage of the measure by the

286 Mr. Bishop's amendment was as follows:

"Provided further, that in laundries and dyeing and cleaning establishments women may work during the first three days of any one week, nine hours per day, but not to exceed fifty-one hours in any one week, or nine hours in any one day."

287 The vote by which the Griffin Woman's Eight-Hour bill passed the Assembly was as follows:

For the bill—Beatty, Beckett, Benedict, Bennink, Bishop, Bliss, Bohnett, Brown, Callaghan, Cattell, Chandler, Coghlan, Cronin, Crosby, Cunningham, Denegri, Farwell, Feeley, Fitzgerald, Flint, Freeman, Gaylord, Gerdes, Griffin of Modesto, Griffiths, Guill, Hall, Hamilton, Harlan, Hayes, Held, Hinkle, Hinshaw, Jasper, Jones, Joel, Judson, Kehoe, Lamb, Lynch, Lyon of Los Angeles, Maher, March, McDonald, McGowen, Mendenhall, Mott, Mullally, Nolan, Polsley, Preisker, Randall, Rimlinger, Rodgers of San Francisco, Rogers of Alameda, Rosendale, Rutherford, Ryan, Sbragia, Slater, Smith, Stevenot, Stuckenbruck, Sutherland, Telfer, Tibbits, Walker, Walsh, Williams, Wilson, Wyllie, and Young—72.

Against the bill—None.

Assembly, it had met with little positive objection. But within a week after its passage in the Lower House, objections to it came in from large business interests in all parts of the State. The San Francisco morning papers united in opposing it, claiming it to be too rigid.[288] Various industries employing women petitioned for a hearing before the Senate Committee on Labor, Capital and Immigration to which the bill had been referred.

A meeting was accordingly arranged. Both sides were represented. No committee room was large enough to accommodate the crowd, and the hearing had to be held in the Senate Chamber.

Against the bill appeared representatives of laundry proprietors, hotel men, manufacturing confectioners, cotton goods manufacturers, cracker manufacturers, and de-

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288 The remarkable similarity of the editorial articles opposing the Griffin bill which appeared in the San Francisco Examiner on February 21, in The Chronicle and The Call on February 24, led to the belief that the articles had been prepared by the same person. This is probably not the case, but there is good reason to believe that the several editorial writers were governed by data furnished by San Francisco business men.

On February 17, a number of San Francisco business men, with F. W. Dohrmann at their head, sent a protest against the bill to Sacramento. The protest gave ten objections to the bill.

The first of these objections (that the bill was unfair to women) is given in the editorial articles which appeared in the Chronicle and Call.

The second objection (that the uniform day is unpractical) is reproduced in all three editorials, as is the third objection (that the passage of the bill would mean less employment for women).

The fourth objection is reproduced in the Chronicle almost word for word. The Dohrmann protest says: "It (the proposed law) would deprive many working women of the opportunity to make more than an ordinary day's wages during a season when work is plenty." The Chronicle's editorial article says: "It would operate to deprive women of an opportunity to make more than an ordinary day's wages during a season when work is plenty."

The other six objections offered by Dohrmann and his businessmen associates are found in all three of the editorial articles.

The comparison clears the Examiner, Call and Chronicle of the suspicion that their editorial articles are furnished by the same person, but it at the same time speaks eloquently of the source of the inspiration of the editorial policies of the three publications.

partment store proprietors. And this opposition was most blunderingly represented.

The most reasonable criticism brought against the bill was that its terms were too rigid. That was the point upon which appeal with some likelihood of success could have been made to the committee. But in the series of tirades against the measure in which the bill's opponents indulged, this point was scarcely touched upon. The principal contentions were that in the event of the bill's becoming a law business would be greatly injured; that women would be thrown out of employment; that those who continued at work would have their wages reduced. One department store proprietor went so far as to declare that the passage of the bill would hurt the Panama-Pacific Exposition.

But the thing that created the most unfavorable impression was the indifference of some of the speakers, particularly of a number representing department stores and the candy manufacturers, to the well-being of their female employees. Reluctant admissions that during rush seasons, women and girls worked for as long as fifteen hours without a rest, further weakened the position of the opposition. This was illustrated by a trite observation of Senator Hurd, a member of the committee, who was presiding, when objection was made that the opposition was taking more of the committee's time than was its due. The time was supposed to be evenly divided between the two sides. A friend of the bill called attention to the fact that the opposition was doing all the talking.

"If I were you," advised Hurd, "I'd make no objection

to their talk. Can't you see they are making votes for your bill every minute?"

The proponents of the measure scored a point when the department store proprietors attempted to show that the passage of the bill would mean ruin for the department stores.

"Do you consider," interrupted John I. Nolan of San Francisco, who appeared in support of the bill, "that Colonel Harris Weinstock of Weinstock, Lubin & Co. is a competent department store manager?"

The speaker replied in the affirmative.

Nolan thereupon read a letter from Colonel Weinstock, in which Weinstock regretted his inability to be present to testify that even during the rush holiday season, an eight-hour day for women would, if made a common condition in California, work no hardship upon the employer.[289]

The committee gave a second hearing on the night of February 23, which did not differ materially from the first meeting. The only result attained was increased bit-

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289 Colonel Weinstock's letter was in full as follows:

"My dear Mr. Nolan:

"I regret that I cannot be present at the meeting of the Legislative Committee this Thursday evening which is to consider the eight-hour bill for working women.

"If I were present I should be glad to testify to the fact that in some of the several mercantile enterprises in which I am interested, and in which many women are employed, we have been working practically on an eight-hour basis for women with every satisfaction to them and to ourselves.

"On general principles I am as an employer in favor of the shorter work day, and if the eight-hour day in mercantile establishments is made a common condition in California, including the Christmas holiday season, it will in the end work no hardship upon the employer, it will be a blessing to the woman worker and will tend to make for a higher degree of efficiency on her part.

"Sincerely,

"H. WEINSTOCK."

terness of feeling, out of which grew rigid determination on the part of the proponents of the bill to pass it as it had gone through the Assembly.

The Committee on Labor, Capital and Immigration fixed the hour for final consideration of the measure at 8 o'clock, February 27. When that hour arrived, the committee room was packed.

Four members of the committee, Bryant, Cutten, Hurd and Larkins, were present. The absentees were Martinelli, Wright and Juilliard. Efforts were made to bring in the absent members, but without result.

Finally, the bill was taken up for discussion. Bryant moved that it be reported back to the Senate with the recommendation that it do pass (as it had passed the Assembly). Senator Cutten seconded this motion. The motion prevailed by a vote of three to one, Larkins, Cutten and Bryant voting in the affirmative; Hurd in the negative.

Senator Hurd joined with Senator Leroy A. Wright in a minority report. In this report a substitute bill was offered, which fixed nine hours as the woman's work day, and excluded from the provisions of the measure those engaged in the harvesting, curing, etc., of perishable foodstuffs, when necessity for such extra work should be shown.

When consideration of the Hurd-Wright substitute came before the Senate three days later, Wright moved to re-refer the original bill and the substitute to the Committee on Labor, Capital and Immigration. This motion was

lost by a vote of 14 to 22.[290] The substitute was rejected by a vote of 5 to 32.[291]

The opposition to the bill continued until its final passage. When it came up for third reading, after every

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290 The motion to refer the bill and substitute to committee was lost by the following vote:

For the motion—Bell, Birdsall, Cutten, Gates, Hans, Hewitt, Holohan, Hurd, Juilliard, Stetson, Strobridge, Thompson, Tyrrell, and Wright—14.

Against the motion—Avey, Beban, Bills, Black, Boynton, Bryant, Burnett, Caminetti, Campbell, Cassidy, Curtin, Finn, Hare, Lewis, Martinelli, Regan, Roseberry, Rush, Shanahan, Walker, Welch, and Wolfe—22.

291 The prohibitive clause of the Hurd-Wright substitute measure read as follows:

"No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment, or by any express or transportation company in this State more than nine hours during any one day or more than fifty-four hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than nine hours during the twenty-four hours of one day, or fifty-four hours during any one week; provided, however, that the provisions of this section in relation to the hours of employment shall not apply to nor affect the harvesting, curing, canning, drying, manufacturing or packing of any variety of perishable fruit, vegetable or other perishable food stuffs. Provided further, that the provisions of this section in relation to the hours of employment shall not apply when a necessity arises in any of the employments or establishments hereinbefore set out, for additional hours of work; and provided further, that such necessity shall be deemed to exist only upon the making of an affidavit by the responsible head of such industry or establishment that a necessity has arisen therefor and upon the filing of said affidavit with the Bureau of Labor of the State of California; and provided further that such period of necessity so arising shall in all not exceed ninety days in any one calendar year; and provided further, that for any and all time during said period of necessity so deemed to exist, the employees of said industry or establishment shall receive as compensation for such additional time beyond the nine hours by this section provided a sum fixed at the rate of one and one-half times per hour the compensation for the said nine hours."

The Senate rejected the substitute by the following vote:

For the substitute—Gates, Hurd, Juilliard, Thompson, and Wright—5.

Against the substitute—Avey, Beban, Bell, Bills, Birdsall, Black, Boynton, Bryant, Burnett, Caminetti, Campbell, Cassidy, Curtin, Cutten, Finn, Hans, Hare, Hewitt, Holohan, Larkins, Lewis, Martinelli, Regan, Roseberry, Rush, Shanahan, Stetson, Strobridge, Tyrrell, Walker, Welch, and Wolfe—32.

delaying move had been exhausted, Senator Curtin offered an amendment to permit women to work fifteen minutes over the eight hours. This amendment was rejected by a vote of 4 to 33.[292]

Senator Wright moved to amend to make the woman's work day nine instead of eight hours,[293] in cases of necessity, and providing overtime. The amendment was rejected. Fourteen voted for it; twenty-four voted against it.

Wright then moved to make the day eight and a half hours. This, too, was rejected, as were amendments by Wright providing for a weekly half-day holiday to be made up during the week, and to permit extra work in case of emergency, provided such emergency employment did not exceed sixty days in any one year.

Senator Strobridge moved to amend to permit women to work ten hours in one day, but making no change in

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292 Curtin's amendment was in full as follows:

"Provided however, that for the purpose of completing any particular piece of work, if any female employee shall be detained in her employment longer than eight hours in any one day, if such detention is for the purpose of completing such piece of work and does not exceed fifteen minutes beyond said eight hours of said day, the employer shall not be deemed to have violated the provisions of this Act."

The amendment was rejected by the following vote:

For the amendment—Bell, Boynton, Curtin, and Thompson—4.

Against the amendment—Beban, Bills, Birdsall, Black, Bryant, Burnett, Caminetti, Campbell, Cartwright, Cassidy, Cutten, Estudillo, Finn, Gates, Hans, Hare, Hewitt, Holohan, Hurd, Juilliard, Larkins, Lewis, Martinelli, Regan, Roseberry, Rush, Shanahan, Stetson, Strobridge, Tyrrell, Walker, Welch, and Wright—33.

293 Wright's nine-hour amendment was rejected by the following vote:

For the amendment—Avey, Bell, Birdsall, Boynton, Gates, Hewitt, Holohan, Hurd, Juilliard, Roseberry, Strobridge, Thompson, Tyrrell, and Wright—14.

Against the amendment—Beban, Bills, Black, Bryant, Burnett, Caminetti, Campbell, Cartwright, Cassidy, Curtin, Cutten, Finn, Hans, Hare, Larkins, Lewis, Martinelli, Regan, Rush, Sanford, Shanahan, Stetson, Walker, and Welch—24.

the weekly limit of the Griffin bill, leaving the total number of hours for the week, forty-eight.

This amendment was defeated by a vote of 12 to 27.[294]

Senator Hurd introduced the last of the amendments. Hurd's amendment provided that no female shall be employed in any home more than eight hours during any one day, or more than forty-eight hours in one week.

This amendment was actually accorded a roll call. Six Senators voted for it, and thirty-three against it.[295]

This brought the eight-hour bill to final vote in the Senate. No amendment had been made to it—not so much as the change of a comma—since its passage in the Assembly. In the Senate only five votes were cast against it; thirty-four Senators voted for it.[296]

Thus of the 120 members of the Legislature, 106 voted

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294 The vote on Strobridge's amendment was as follows:

For the amendment—Birdsall, Boynton, Estudillo, Gates, Hewitt, Holohan, Hurd, Roseberry, Stetson, Strobridge, Thompson, and Wright—12.

Against the amendment—Avey, Beban, Bell, Bills, Black, Bryant, Burnett, Caminetti, Campbell, Cartwright, Cassidy, Curtin, Cutten, Finn, Hans, Hare, Juilliard, Larkins, Lewis, Martinelli, Regan, Rush, Sanford, Shanahan, Tyrrell Walker and Welch—27.

295 The vote on Hurd's amendment was in full as follows:

For the amendment—Birdsall, Cutten, Estudillo, Hurd, Roseberry, and Wright—6.

Against the amendment—Avey, Beban, Bell, Bills, Black, Boynton, Bryant, Burnett, Caminetti, Campbell, Cartwright, Cassidy, Curtin, Finn, Gates, Hans, Hare, Hewitt, Holohan, Juilliard, Larkins, Lewis, Martinelli, Regan, Rush, Sanford, Shanahan, Stetson, Strobridge, Thompson, Tyrrell, Walker, and Welch—33.

296 The Senate vote on the Women's Eight-Hour bill was as follows:

For the bill—Avey, Beban, Bell, Bills, Black, Bryant, Burnett, Caminetti, Campbell, Cartwright, Cassidy, Curtin, Cutten, Estudillo, Finn, Gates, Hans, Hare, Hewitt, Holohan, Juilliard, Larkins, Lewis, Martinelli, Regan, Roseberry, Rush, Sanford, Shanahan, Stetson, Tyrrell, Walker, Welch, and Wright—34.

Against the bill—Birdsall, Boynton, Hurd, Strobridge, and Thompson—5.

for the bill; five against it; nine—one Senator and eight Assemblymen—did not vote on this issue at all.

But even with its passage in Assembly and Senate, the opponents of the measure did not cease their efforts against it. Delegations visited Governor Johnson and urged him to veto the measure. The Governor heard their arguments, and the arguments of the proponents of the measure.

Then he signed the bill and it became a law.[297]

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297 Upon signing the Women's Eight-Hour bill, Governor Johnson issued the following statement:

"The bill prescribing an eight-hour day for women comes to me as an entirety. I must either accept it as a whole or reject it as a whole. I cannot modify or amend it. I have listened to oral arguments and have received many written arguments both for and against the measure. Independently, the question has been thoroughly investigated and I have before me the reports submitted upon legislation of this character not only in this country, but in France, Germany, Switzerland, and England. Beyond this, some investigation has been made by my office among those who will be most directly affected by the law. While a less drastic and more elastic measure might have been preferable, and while, personally, I might have desired that legislation upon the subject should be gradual, still the advantages of the present bill outweigh the disadvantages. Strong men, by unity of action, have obtained for themselves an eight-hour day. Shall we require greater hours of labor for our women? As long ago as 1872, it was enacted by Section 3244 of the Political Code, that eight hours of labor should constitute a day's work, and it was likewise, by the following section, provided that eight hours labor should constitute a legal day's work in all cases where the same was performed under the authority of the State, or of any municipal corporation within the State, and our law has gone to the extent of requiring that a stipulation to that effect must be made a part of all contracts in which the State or any municipal corporation is a party. The policy, therefore, of the law in this State, is of long standing, and while the sections quoted refer, of course, to public work, they established what has been the set policy of California for more than forty years, and that is that eight hours shall constitute a day's labor. The limitation of the hours of labor to eight is, therefore, by no means new, but that principle is firmly, and doubtless, irrevocably established in California.

"The argument against the eight-hour day for women is purely economic. It is asserted that it will work hardship upon various business enterprises, that these enterprises will have to close and that financial disaster will follow. This has been the argument ever advanced against legislation of this sort and even against legislation designed for the protection of the public generally, such as pure food laws. When the first shorter hour law was adopted in England, as long ago as 1837, Nassau William

Senior, one of the leading political economists of his time, insisted that the reduction of hours of labor would eliminate profit and bring disaster upon employer and employee alike. The English employers then with the utmost vehemence protested. None of the ills they prophesied occurred. There are many of us who remember the Child Labor Laws and how at the time of the enactment of the first of these laws in our State many of our reputable business men protested with earnestness and apparent sincerity, asserting that they could not compete with their rivals and that the enactment of such laws meant their ruin. The laws were enacted and business continued just the same. Pure Food Laws enacted for the benefit of the public, the protection of its health in another way than that sought in the present act, were for years resisted upon the theory of the outrage that would be done business by their enactment, and the great losses that would be entailed. The laws went into effect, and business continued just the same. Two years ago the Legislature enacted a law limiting the hours of men working in mines in this State to eight (Statutes 1909, page 279). Many mine owners appeared then and insisted that if the law went into effect they would have to close down their mines and that the industry upon which originally rested the fame and romance of California, would be utterly destroyed. The law went into effect and to-day the same mines are running with the same profit, and the same employees.

"The hours of labor of men, by the same act, in smelters and in other institutions for the refining of ores and metals, were limited to eight. The smelters still run, additional ones are being built, and the subject of smelting has become so important, even with men's hours limited to eight, that it has engrossed a considerable portion of the time of one of the houses of the Legislature.

"The economic argument also fails because experience has shown that productivity will not be materially decreased under an eight-hour law. The report of the New York Bureau of Labor Statistics, 1900, states: 'Certain facts appear with distinctiveness, one of which is that the cotton industries of Massachusetts have not only grown steadily throughout the period of short hour legislation, but what is far more impressive, they made larger gains than are shown by adjacent States with less radical short hour laws.' This quotation is in line with the statements contained in many of the statistical reports that I have investigated.

"As indicating what experience has shown in our State, where shorter hours have been given women, I quote this telegram received by me in the early days of the discussion of the bill:

" 'Highlands, Cal., January 30, 1911.

" 'Governor Hiram W. Johnson,
" 'Sacramento, Cal.

" 'Am informed that Citrus Protective League opposes bill reducing hours of labor of women and children in packing houses. I earnestly recommend the passage of this bill. Two years ago the Highland Orange Growers' Association, at urgent request of women, voluntarily reduced hours of labor to save breakdown in health. Result excellent. Better work, better health, less absence. Long ago I personally reduced picking hours in the groves. I got better and more work in shorter hours. Hope you can see your way clear to support measure protecting women and children doing piece work in cold, unheated, barnlike packing houses. Claim absurd that industry will suffer by passage of this bill. Citrus industry will be greatly benefited by shorter hours. Women

and children need this protection. This is not a Labor Union movement alone but a humanity movement. Protection League has not referred the matter to packing houses and the opposition of the League does not voice the wish of fruit growers of great Highland district where hours have been voluntarily shortened. If you approve will you show this message to Senator Avey and Assemblyman Bennink. Publish if you wish.

" '(Signed) ALEXIS FRYE.'

"After the receipt of this dispatch, I received one from the Highland Orange Growers' Association endorsing all that Mr. Frye had wired me.

"The eight-hour law for women is admittedly right in principle; it is the exemplification of humanitarianism; its beneficent purpose has long since attached to men. It may in some rare instances work hardship, but in these instances we may hereafter, as experience demonstrates the necessity, provide a remedy, and I shall not hesitate in the future, if the necessity becomes apparent, to ask any proper amendment. I do not believe the law will result in great disaster, financial or otherwise. I think that business conditions will adjust themselves to the law, exactly as business conditions have in the past adjusted themselves, in every instance, to remedial legislation of this character. The purpose of the act, I believe, is just, and I have therefore attached my signature to the bill."

CHAPTER XXI.

THE COMPULSORY ARBITRATION BILL.

Opposition of Labor Representatives Prevented Passage of a Measure Which Was Not Entirely Satisfactory to Either Side.

The labor representatives in attendance at the 1911 Legislature regarded the defeat of the so-called Compulsory Arbitration bill [298] as a victory quite as important as the passage of the Employers' Liability act, or even the Eight-Hour bill.

This measure was strongly urged by Colonel Harris Weinstock. It was based upon the Canadian Industrial Disputes act, and applied solely to railroads and other public service undertakings.

The measure provided that in public services a strike or lockout should be unlawful until the issues in dispute had been submitted to a board of inquiry of three members, one member to be nominated by each side to the controversy and appointed by the Governor, and the third to be selected by the first two appointees.

In the event of the two members failing to agree upon a third within three days, the bill provided that the Governor appoint the third member.

This board was authorized to make full investigation

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[298] Senate Bill 918, described in the bill as "The Industrial Disputes Investigation Act."

into the matters in dispute, to send for persons and papers, administer oaths, compel the attendance and testimony of witnesses, and report its findings.

But such findings were not made binding upon either party.[299] Each side was left at liberty to accept or reject them.

The proponents of the measure contended, however, that if the board's report were fair, neither side would dare offend public opinion by refusing to abide by it.

The theory upon which the measure was drawn was that in labor disputes affecting a public service there are three, rather than two, parties concerned, namely, the employees, the employers and the general public. The most frequently quoted example of this while the measure was under consideration was the San Francisco street-car strikes, involving the United Railroads and its employees. It was shown that whereas these labor disputes had cost the United Railroads and the striking carmen dearly, the further effect had been not only the inconvenience of the public, but the ruin of hundreds of business men who had no connection with either side of the controversy. To save the third party in interest from the attending inconvenience and cost of strikes and lockouts in public service enterprises, the proponents of the "Compulsory Arbitration" bill contended it should be enacted into law.

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299 Section 53 of the bill provided that "No court of the State of California, shall have power of jurisdiction to recognize or enforce, or to receive in evidence any report of a board, or any testimony or proceedings before a board or as against any person, or for any purpose, except in the case of a prosecution of such person for perjury, or a judgment entered pursuant to an agreement under this act."

On this point the bill provided:

(1) No employee of a public service enterprise should join with his fellows in a strike until after the inquiry had taken place.

(2) No public service enterprise should declare a lockout until after such inquiry.

The proponents of the bill contended there was nothing in the measure to prevent employees quitting work as individuals, for any reason or no reason. In the same way, there was nothing in the bill to prevent an employer discharging his men as individuals for any reason or no reason.

Furthermore, after the Board of Investigation had reported, nobody was harmed by its finding, and the strike or lockout, regardless of the justice or injustice of it, could follow.

There were two sources of criticism:

(1) The objection was raised that the bill did not provide for compulsory arbitration at all, and even though it became a law, it would be a dead letter in labor troubles such as the street-car strike at San Francisco.

(2) Organized Labor opposed the measure on the ground that it interfered with the personal liberty of the individual in prohibiting strikes until after the report of the Board of Investigation had been published.[300]

Furthermore, it was contended that in Canada such a

300 "This bill if enacted," said the report on Labor Legislation issued by the California State Federation of Labor, "would have seriously hampered the workers by depriving them of the right to quit work whenever in their own judgment such a course is necessary. Moreover, it would have established a precedent for the extension of the same principle of compulsory labor to the workers in private industries, leading ultimately to the legal prohibition of the strike in general."

law had worked against labor, by causing delays which gave the employers time to build stockades, import "scab" labor, and otherwise prepare to offer effective opposition to their discontented employees.[301]

But it was on the ground that the enactment of the bill would be but the beginning of legislation to outlaw the strike, that labor took determined stand against the measure. A letter protesting against the measure's enactment was directed to every Senator. For days, letters and telegrams from interested constituents, insisting against the bill's passage poured in upon the members. Nevertheless the advocates of the bill put up a determined fight for its passage. But it failed to pass even the house of its origin. When it came to the test, twenty-two Senators voted against it; only sixteen voted for it.[302]

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301 Labor's general distrust of the bill was brought out during the three-hours' debate upon it in the Senate, when it was up for final passage.

Senator Bryant, for example, from a strong San Francisco Labor Union District, put this question to Senator Boynton, author of the measure:

"Suppose," said Bryant, "this bill had been a law two years ago and there had been a strike on with the Southern Pacific Company, if the Governor had been called upon to appoint the third member of the arbitration board, whom do you suppose would have been favored?"

Senator Wright, in the chair, whitened a little and brought the gavel down with a snap. "The question is out of order!" he declared.

Bryant took his seat.

"If the bill become a law," declared Caminetti, who led the opposition to it, "it will cause not only discord between capital and labor, but political discord."

302 The vote on Senate Bill 918 was as follows:

For the bill—Avey, Bell, Bills, Boynton, Estudillo, Gates, Hewitt, Holohan, Hurd, Roseberry, Rush, Stetson, Strobridge, Thompson, Walker, and Wright—16.

Against the bill—Beban, Birdsall, Black, Bryant, Burnett, Caminetti, Campbell, Cartwright, Cassidy, Cutten, Finn, Hans, Hare, Juilliard, Larkins, Lewis, Martinelli, Regan, Shanahan, Tyrrell, Welch, and Wolfe—22.

Although the measure was by no means satisfactory to those who would have a compulsory arbitration law enacted, nevertheless its effective opposition came entirely from Organized Labor. Without this opposition, the measure would probably have become a law.

CHAPTER XXII.

THE FREE TEXTBOOK MEASURES.

Bill and Constitutional Amendment Were Defeated in the Senate After Having Passed the Lower House.

Labor suffered the first of its two important defeats before the 1911 Legislature, in the failure of all proposed legislation to provide for furnishing the children of the public schools with free textbooks.

Labor is thoroughly committed to this principle. The policy has been endorsed by the American Federation of Labor, and by the California State Federation. The Labor legislative representatives went to Sacramento instructed to support free textbook measures.[808]

Several such measures were introduced, but the two over which the fight was made, were Assembly bill

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808 In the report on Labor Legislation of the 1911 session, issued by the California State Federation, the failure to adopt Assembly Constitutional Amendment 16, the Free Text Book amendment, is made subject of special comment.

The Senate vote by which the amendment was refused adoption is given, and is followed by this comment:

> "It will be noted that seven San Francisco Senators voted against this measure, which is a part of the platform of the American Federation of Labor, and was endorsed by the convention of the California State Federation of Labor."

The seven San Francisco Senators referred to were Beban, Cassidy, Finn, Hare, Regan, Welch and Wolfe.

Beban, in 1907 and in 1909, was elected to the Assembly as a Union Labor party candidate. Finn, Hare, Welch and Wolfe, when they were elected to the Senate in 1909, had Union Labor party endorsements, and owed their several elections largely to such endorsements.

113,[304] introduced by Smith of Alameda, and Assembly Constitutional Amendment No. 16,[305] introduced by Telfer of San Jose.

In the Assembly there was practically no opposition offered either the Smith bill or the Telfer amendment.

The Smith bill passed the Assembly by a vote of 67 to 1, Chandler of Fresno being the only member to vote in the negative. The Telfer amendment was adopted without a vote being cast against it, while fifty-seven Assemblymen, including Chandler, voted for it.

The appearance of the measures in the Senate, however, marked the beginning of opposition which event-

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304 Assembly bill 113 provided that:

"The county superintendent of schools of each county shall each year prepare and forward to the State superintendent of public instruction a written requisition for all State school text-books required to be used in the common schools in such county for the following year; such books shall thereupon be forwarded to him at such address or addresses in the county as he may designate before the opening of the following school year, and the cost price of such books at Sacramento together with the cost of transportation shall be paid out of the common school funds of such county upon the order of the county board of education. Such books shall be distributed to the several common schools of the county in charge of the principal of such school and shall remain the property of the county for the use of the pupils of the several common schools thereof without cost to such pupils or their parents or guardians, under such rules as shall be adopted from time to time by the county board of education."

305 Assembly Constitutional Amendment 16 provided that:

"The State Board of Education shall compile, or cause to be compiled, and adopt, a uniform series of text-books for use in the common schools throughout the State. The State board may cause such text-books, when adopted, to be printed and published by the superintendent of State printing, at the State printing office, and when so printed and published, they shall be distributed, free of cost, to all children attending the common schools of this State, under such conditions as the Legislature shall prescribe. The text-books so adopted shall continue in use not less than four years without any change whatsoever; and said State board shall perform such other duties as may be prescribed by law. The Legislature shall provide for a board of education in each county in the State. The county superintendents and the county boards of education shall have control of the examination of teachers and the granting of teachers' certificates within their respective jurisdictions."

ually resulted in their defeat.[306] The measures were opposed in the Senate Committee on Education to which they were referred; they were opposed on the floor of the Senate.

The Committee flatly recommended that the Smith bill be defeated; while it took a non-committal attitude on the Telfer amendment, sending it back to the Senate "without recommendation."

Even with an adverse committee report against it, the Smith bill came within four votes of passage in the Senate, receiving seventeen votes to nineteen cast against it.[307] Thus in a Legislature of 120 members, eighty-four voted for the Smith Free Textbook bill, twenty against, while sixteen did not vote at all. But had the sixteen voted against the bill, then only thirty-six votes would have been registered against it to eighty-four for it. But the eighty-four votes for it were not distributed in the right way, and the twenty negative votes cast, and the sixteen possibly negative votes not cast at all, defeated the purpose of this overwhelming majority of the

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306 Some of the arguments used against the measure were curious, in view of the American notion that the State owes every child a free education. For example:

Senator Eddie Wolfe stated before the Senate Committee on Education, when the Smith bill was under consideration, that he opposed the free text-book bill because he believed American boys and girls should not be taught to accept charity.

Assemblyman Smith very pertinently replied that all other parts of the school system are accepted as the children's right, and that free text-books would not be charity.

307 The Senate vote, by which the Smith bill (A. B. 113) was defeated was as follows:

For the bill—Birdsall, Boynton, Caminetti, Curtin, Cutten, Estudillo, Hans, Hewitt, Hurd, Juilliard, Larkins, Lewis, Rush Shanahan Stetson, Walker, and Wright—17.

Against the bill—Avey, Beban, Bell, Bills, Black, Bryant, Cassidy, Finn, Gates, Hare, Holohan, Martinelli, Regan, Roseberry, Strobridge, Thompson, Tyrrell, Welch, and Wolfe—19.

Legislature. The Free Textbook bill did not become a law.

The vote on the Telfer amendment was even more significant. Being a Constitutional Amendment, a two-thirds vote of the Senate was required for its adoption and submission to The People.[308] Thus the votes of twenty-seven of the forty Senators were required for favorable action.

The amendment was defeated in the Senate by a vote of 16 to 11.[309]

As has been seen, in the Assembly, fifty-seven members voted for this amendment, while not a member voted against it. Thus out of 120 members of the Legislature, seventy-three voted for the amendment, and only eleven against, while thirty-six did not vote. But forty-seven out of 120 members—eleven of whom voted and thirty-six who did not vote at all—blocked the purpose of seventy-three. The People of California were denied the

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308 Smith in his "The Spirit of American Government," says: "All democratic constitutions are flexible and easy to amend. This follows from the fact that in a government which The People really control, a constitution is merely the means of securing the supremacy of public opinion and not an instrument for thwarting it. Such a constitution cannot be regarded as a check upon the people themselves. It is a device for securing to them that necessary control over their agents and representatives, without which popular government exists only in name. A government is democratic just in proportion as it responds to the will of the people; and since one way of defeating the will of The People is to make it difficult to alter the form of government, it necessarily follows that any constitution which is democratic in spirit, must yield readily to changes in public opinion."

309 The vote by which the Free Text-book amendment (A. C. A. 16) was defeated was as follows:

For the amendment—Avey, Bills, Boynton, Caminetti, Cutten, Estudillo, Hewitt, Juilliard, Lewis, Rush, Sanford, Shanahan, Stetson, Strobridge, Walker and Wright—16.

Against the amendment—Beban, Bell, Cassidy, Finn, Gates, Hare, Holohan, Martinelli, Regan, Welch, and Wolfe—11.

opportunity to declare whether or not it is their wish that school textbooks shall be issued to California school children free of charge, the same as public school tuition is furnished free of charge.

CHAPTER XXIII.

DEFEAT OF THE "ANTI-INJUNCTION" BILL.

Measure Was Passed in the Senate By Narrow Margin, But Defeated in the Lower House, Because of the Inability of Its Proponents to Compel Action Before the Hour of Adjournment Arrived.

The so-called "Anti-Injunction" bill was introduced by Senator Caminetti of Amador.[309] Its introduction was

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309 The full text of the Anti-Injunction bill (Senate bill 965) was as follows:

Section 1. No restraining order or injunction shall be granted by any court of this State, or a judge or the judges thereof, in any case between an employer and employee, or between employers and employees, or between employees, or between persons employed and persons seeking employment, or involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application, for which injury there is no adequate remedy at law; and such property and property right must be particularly described in the application, which must be in writing and sworn to by the applicant or by his, her, or its agent or attorney. And for the purposes of this act no right to continue the relation of employer and employee, or to assume or create such relation with any particular person or persons, or at all, or to carry on business of any particular kind, or at any particular place, or at all, shall be construed, held, considered, or treated as property or as constituting a property right.

Sec. 2. In cases arising in the courts of this State or coming before said courts, or before any judge or the judges thereof, no agreement between two or more persons concerning the terms or conditions of employment, or the assumption or creation or termination of any relation between employer and employee, or concerning any act or thing to be done or not to be done with reference to or involving or growing out of a labor dispute, shall constitute a conspiracy or other civil or criminal offense, or be punished or prosecuted, or damages recovered upon as such, unless the act or thing agreed to be done or not to be done would be unlawful if done by a single individual; nor shall the entering into or the carrying out of any such agreement be restrained or enjoined unless such act or thing agreed to be done would be subject to be restrained or enjoined under the provisions, limitations, and definitions contained in the first section of this act.

Sec. 3. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

signal for the opening of a controversy, which continued until the day of adjournment.

The Senate Judiciary Committee, to which the measure was referred, divided upon it, sending two reports to the Senate. The majority of the committee recommended its passage; the minority[310] against its passage. This was on March 8. Twelve days later, March 20, a week before adjournment, the bill came before the Senate for final action.

Caminetti, in charge of the bill, compelled attendance

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310 The majority report was signed by Chairman Stetson for the committee. On a question of personal privilege, Stetson made the following statement regarding the report:

"I voted with the majority of the committee, but did so because I thought there were excellent features in the bill, and wished to see it considered on the floor of the Senate. I stated at the time I voted that I should not finally vote for the bill unless amended. The amendments I referred to are those suggested in the minority report."

The minority report was signed by Gates, Wright, Thompson, Estudillo, Boynton and Roseberry. It was as follows:

"The undersigned members of the Judiciary Committee of the Senate, constituting a minority of said committee, to which committee was referred Senate Bill No. 965, being "An Act to regulate the issuance of restraining orders and injunctions and procedure thereon and to limit the meaning of conspiracy in certain cases," beg leave to submit the following minority report:

"The bill provided that no injunction or restraining order shall be issued unless it is necessary to prevent irreparable injury to property or to a property right. It then proceeds to define property, and in the opinion of the minority of the Judiciary Committee to place an unconstitutional limitation upon property rights by the use of the following language: 'And for the purposes of this Act no right to carry on business of any particular kind, or at any particular place, or at all, shall be construed, held, considered, or treated as property or as constituting a property right.'

"Under the Constitution of the State of California one of the first declarations of the people is 'that all men are by nature free and independent and have certain inalienable rights, among which are those of acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness.' The right of protecting property is therefore an inalienable one which is as dear to all Anglo-Saxon people as the right of life and liberty itself. We deny that it is within the power of the Legislature, by a legislative act, to say what is and what is not property. The right to carry on business if that business be a legitimate one is inalienable. The good will of a business owned by an individual, a copartnership, an association, or corporation has been held to be property from time immemorial. In this respect we consider Senate Bill No. 965 an invasion of constitutional rights and an assault upon the right of property and we therefore respectfully recommend that the bill do not pass."

by a call of the Senate, although the hour was well on toward midnight, and the Senators had been at work continuously, if committee meetings be considered, since 10 o'clock that morning. Nor were the doors opened until thirty-six of the forty members were in attendance. The bill was then passed by a vote of 22 to 14.[311] Senator Gates gave notice that the following day he would move to reconsider the vote by which the bill had been passed.[312]

This, on the following day, Senator Gates did, just before the noon recess, and the Senate decided to take the matter up that afternoon immediately after consideration of the third reading of Assembly bills. Thus, every Senator had opportunity to know that this important Anti-Injunction bill would be up for final consideration that afternoon after the third reading of the Assembly bills.

When the third reading of Assembly bills had been concluded, and before the Anti-Injunction bill could be taken up, Senator Cassidy, as chairman of the Commit-

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311 The vote by which the Anti-Injunction bill passed the Senate on the night of March 20 was as follows:

For the bill: Avey, Beban, Black, Bryant, Caminetti, Campbell, Cartwright, Finn, Gates, Hare, Holohan, Juilliard, Lewis, Martinelli, Regan, Rush, Sanford, Shanahan, Tyrrell, Walker, Welch, and Wolfe—22.

Against the bill: Bell, Bills, Birdsall, Boynton, Cutten, Estudillo, Hewitt, Hurd, Larkins, Roseberry, Stetson, Strobridge, Thompson, and Wright—14.

312 Under the rules of the Senate, on the day following that on which a final vote is taken on a bill, such vote may be reconsidered on the motion of any Senator, provided notice of intention to move to reconsider shall have been given on the day on which such final vote was taken by a Senator voting with the prevailing side. When a motion to reconsider is made, if twenty-one Senators vote for reconsideration, the bill is again put upon its final passage and, regardless of the former vote upon it, passed or defeated.

tee on Engrossment and Enrollment, presented two reports.

And then Senator Cassidy dropped out of sight as completely as though the earth had opened and swallowed him up. For hours, because of his disappearance, the members of the Senate of the State of California remained locked up in the Senate Chamber. For him the force of the Senate sergeant-at-arms, the police of Sacramento and San Francisco, and the sheriffs of a half dozen counties scoured the country. But they did not find Cassidy.[313]

Twenty-one votes were necessary to carry Senator Gates's motion that the bill be reconsidered. When it came to the vote, thirty-four Senators were in their seats. That twenty-one of them would vote to reconsider was improbable. The Senate doors were accordingly locked, and the Sergeant-at-Arms ordered to bring in the absentees.

Four of the six absentees, Avey, Bills, Welch and Burnett, were brought in within a few minutes. After an hour's search, Senator Hare was found and brought in also. This left only one absentee, Cassidy.

A canvass of the Senate showed that twenty of the Senators present were for reconsideration, and nineteen against.

By constitutional provision, in the event of a tie in the Senate, all forty Senators voting, the Lieutenant-Governor has the deciding vote. Lieutenant-Governor Wallace was known to favor reconsideration. Thus, with

313 The story was published the following day that Cassidy had left the Capitol so hurriedly that he went off with another man's hat.

Cassidy present, there would be reconsideration no matter how Cassidy might vote. If he voted to reconsider, he would furnish the twenty-first vote necessary for reconsideration. If he voted against reconsideration, he would tie the vote, thus giving the Lieutenant-Governor his constitutional right to decide the issue.

Those who wished to defeat the bill were for reconsideration. Their purpose was to compel the attendance of Cassidy. Those who were for the passage of the measure proposed that the vote of the day before should stand. They accordingly wished to defeat reconsideration. To this end they aimed to force a vote on reconsideration before Cassidy could be found. But the vote on reconsideration could not be taken while the doors, under the call of the Senate, were locked, and the doors could not be opened until a majority of the Senators present voted to open them. As twenty of the Senators were for reconsideration they could keep the doors locked until Cassidy's return. And this they proceeded to do.

The call of the Senate had began at half past five in the afternoon. Many of the Senators had not taken time for lunch. By eight o'clock they were hungry and angry. Then the charge was made that Senators had escaped from the room. The roll was called and only thirty-five of the thirty-nine members who should have been present answered to their names. Hare, Campbell, Tyrrell and Hans were missing.

Half an hour later the four, ostentatiously and exasperatingly picking their teeth, were brought in by the sergeant-at-arms. It developed that they had escaped

from a window to get something to eat. Their hungry colleagues excused them.

Later on sandwiches were brought in; cigars were lowered from the gallery; the Senators engaged in a game of white men and Indians, with Senate files and wastepaper baskets as ammunition and the President's desk the principal fort; visitors filled the gallery and gazed with astonishment upon the unusual scene. Still, Senator Cassidy could not be found.

Along toward midnight it was discovered that Senator Hare had, for the second time, escaped from the room, this time clearly to block the Senate in the event of Cassidy being found. The hunt from then on was to find Hare as well as Cassidy. The sergeant-at-arms was directed to call to his assistance the entire police force and sheriff's force of Sacramento county, and of such other counties as might be found necessary. The search was extended to San Francisco.

At one o'clock the following morning, actors from a Sacramento theater were brought in to help keep the Senators awake. Later on a band was introduced. At 3 o'clock, nine hours and a half [814] after the call of the Senate had been ordered, a curious "gentlemen's agreement" was entered into between the two factions. The terms of the agreement were:

(1) The Senate was to be held to be in continuous session, whether the Senators were present in the chamber or not.

(2) No Senator was to raise the question of quorum.

(3) *Every Senator present was held to be bound in*

814 The money cost to the State of keeping the Senate in session those nine and a half hours was estimated to be $1200.

honor to be back in the Senate Chamber promptly at noon.

(4) The proceedings were, at noon, to be held to be precisely where they were at 3 A. M., the hour at which the agreement was entered into.

Upon this understanding the doors were opened and such Senators as desired to do so were permitted to leave. Several of them, however, remained in the chamber until the end of the proceedings.

Before noon both Cassidy and Hare had been found.

Hare was captured in a barber shop; Cassidy as he was entering his apartments at Sacramento.

But when the hour of noon arrived, only thirty-six Senators were in the Senate chamber. Hare and Cassidy were detained in the Sergeant-at-Arms' office. Senators Finn and Beban were not in their seats. After waiting until 12:30 the Senate was called to order.

There was no way to determine officially that Finn and Beban were absent except by roll call. Senator Wright moved that the roll be called. It was an important moment for the absent Finn and Beban. But the point of order was raised that a roll call could not be had during the call of the Senate.[315] President pro tem. Boynton, who was in the chair, held that the point was well taken.[316]

315 My own notes have it that this point of order was raised by Senator Wolfe. The Senate Journal of March 21—although it was afternoon of March 22, the Senate by parliamentary fiction was in session as of March 21—shows that the point was raised by Senator Shanahan. Senator Shanahan informs me that it is unlikely that he raised this point. As a matter of fact, roll-call could have been compelled on a motion to discontinue the call of the Senate.

316 It will be noted that the previous evening, when the absence of Campbell, Hare, Hans and Tyrrell was discovered, the roll was called, although the Senate was then under the order of call of the Senate, the same call which was in force at the time the motion affecting Finn and Beban was made. The point was not raised in the first instance, however.

In the midst of the discussion, for Senator Thompson insisted that under parliamentary practice roll call was in order, Finn and Beban entered the Senate chamber. The matter of roll call was dropped, and Cassidy brought before the bar of the Senate.

Wolfe moved that Cassidy be excused for his absence from the Senate chamber.

Senator Thompson moved as a substitute that Cassidy be permitted to take his seat, and that further consideration of Wolfe's motion be made a special order for Thursday, March 23.

The vote was taken on Thompson's substitute motion.

If Thompson's motion prevailed, Cassidy's case would be given consideration before a vote to excuse him was taken.

If Thompson's motion were defeated then Wolfe's motion would be immediately acted upon, and Cassidy, in all probability, excused without trial, much less, punishment.

Thompson's substitute motion was defeated by a vote of 15 to 21.[317]

After the defeat of Thompson's substitute, Wolfe's original motion prevailed. The Senate excused Cas-

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317 The vote on Thompson's motion was as follows:

For Thompson's substitute: Avey, Bell, Bills, Birdsall, Boynton, Cutten, Estudillo, Gates, Hewitt, Larkins, Roseberry, Stetson, Strobridge, Thompson and Wright—15.

Against Thompson's substitute: Beban, Black, Bryant, Caminetti, Campbell, Cartwright, Curtin, Finn, Hans, Holohan, Juilliard, Lewis, Martinelli, Regan, Rush, Sanford, Shanahan, Tyrrell, Walker, Welch and Wolfe—21.

sidy.[318] Cassidy took his seat.[319] The Senate, which had awaited Cassidy's coming for nearly twenty hours, resumed the session's work where it had been stopped the previous afternoon by Cassidy's disappearance.

Wolfe moved that further proceedings under call of

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318 The excusing of Cassidy was generally condemned. Said the Sacramento Union of the incident in its issue of March 24:

"The nineteen-hour call of the Senate became a farce when Senator Cassidy was promptly excused and allowed to resume his seat without even a reprimand. The people of the State will not take the legislators seriously if they do not conduct themselves with some dignity. They should have taught Cassidy a lesson and impressed him with the serious nature of his offense.

"Cassidy's excuse about the visit to the friend and his beautifully innocent story of ignorance can be taken for what each considers them worth, but the fact remains that he cost the State several hundred dollars in the idleness of the Senate and in prosecuting the search. We need not worry over the discomforts he caused his colleagues, if they see fit to overlook them. For the sake of a proper respect for the State's law-making body, however, we think the irresponsible Senator from San Francisco should have been severely punished.

"In that memorable call San Francisco held a prominent place, for during the long hours of Monday night the only other member to give the Senate trouble was Hare from the same city. But that was not all. After 3 o'clock in the morning, it will be recalled, the Senators under solemn promise to return promptly at noon Tuesday were allowed to go to their beds. Noon came, but two Senators failed to put in an appearance until it was convenient for them to do so. Who were they? Why, from San Francisco, of course—Finn and Beban."

319 Two days later, March 24, Cassidy made the following explanation which will be found in the Senate Journal of March 24:

"Mr. President: It was understood that there would be no night session of the Senate on Tuesday, March 22d (21st), and after making my report as chairman of the Committee on Engrossment and Enrollment, at about 4:20 p. m., I was called to attend a meeting of the Assembly Committee on Public Health and Quarantine. They desired to consider my bill (Senate Bill No. 961), which is known as the 'Oyster Bill,' and had been pending final action at their hands for some weeks. After leaving this meeting, I went to my committee room, that of Engrossment and Enrollment, to ascertain if there were any further reports to make before adjournment. I was informed that everything had been reported to the Senate. It was then 5 o'clock p. m. Thereafter I left the building to keep an engagement which I had made, and spent the night with friends. When I left the Senate Chamber, Senate Bill No. 965 was not under discussion, and no call of the Senate was anticipated by me.

"When I arose the following morning I was greatly surprised to read the press accounts of the Senate call, and the great trouble my absence had caused the members thereof. This was the first knowledge I had of it.

"I desire to express to the President and my fellow members of the Senate, the deep regret I feel for this unfortunate occurrence."

the Senate be dispensed with. The motion prevailed. Hare took his seat without being questioned as to his escape from the Senate chamber.

On the question of reconsideration of the vote by which the Anti-Injunction bill had been passed, Cassidy voted in the negative. This tied the vote,[320] with all the Senators voting, giving the Lieutenant-Governor the deciding vote.

But before Wallace could announce his vote, Wolfe raised the point of order that the deciding vote vested in the Lieutenant-Governor applies only to the vote on the original passage of a bill, and not on a question of reconsideration.

President Wallace declared the point not well taken, and voted for reconsideration.[321]

The reconsideration of the Anti-Injunction bill in the Senate was accordingly accomplished by a vote of

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320 The vote on Gates's motion to reconsider the vote by which the Anti-Injunction bill had been passed was as follows:

For the motion to reconsider: Avey, Bell, Bills, Birdsall, Boynton, Curtin, Cutten, Estudillo, Gates, Hewitt, Holohan, Hurd, Larkins, Roseberry, Rush, Stetson, Strobridge, Thompson, Walker and Wright—20.

Against the motion to reconsider: Beban, Black, Bryant, Burnett, Caminetti, Campbell, Cartwright, Cassidy, Finn, Hans, Hare, Juilliard, Lewis, Martinelli, Regan, Sanford, Shanahan, Tyrrell, Welch and Wolfe—20.

321 The deciding vote was cast only after extended debate over Wolfe's point of order.

Senator Wright, in opposing Wolfe's contention, fell back upon the Constitutional provision that the Lieutenant-Governor "shall be President of the Senate, but shall only have a casting vote therein."

Wright contended that no restriction is placed upon the casting vote, and that the provision holds in a tie of the Senate in a matter of reconsideration as well as in any other.

Senator Wolfe claimed that as in Rule 50 of the Standing Rules of the Senate it was stated that it took 27 votes to carry any motion to reconsider any Constitutional amendment, and in the same rule declared that it took 21 votes to carry any motion to reconsider a vote, therefore as in the case of the casting of 27 votes, the President could not give a casting vote; and as in the case of the 27 votes the President's vote could not in any event

21 to 20. After a twenty-hour fight, the proponents of the bill were for the moment defeated.

Senator Wright moved to amend the bill by striking out the provision that the right "to carry on business of any particular kind, or at any particular place, or at all," shall not for the purposes of the act be held to be a property right.

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be one of the 27, so in the case of the 21 votes required to reconsider the President's vote likewise could not be one of the 21.

Senator Wolfe urged on the Lieutenant-Governor the seriousness of the situation and his great responsibility.

Wallace declared his agreement with Senator Wolfe in the statement that as President of the Senate he was placed in a responsible position, and stated that the Senate and the people of the State would not consider any man fit to preside in this Senate, who would shirk the serious and the disagreeable, and be willing to act only where things were pleasant.

The Lieutenant-Governor then read from the clause of the State Constitution quoted above, and insisted that it in no way limited the cases in which the casting vote could be employed. He pointed out that the clause referred to in sustaining Rule 50 of the Senate, which required 21 votes to carry any motion to reconsider, did not designate the kind of votes nor directly nor indirectly suggest that the President of the Senate could not in this case as well as in other cases of a tie give the casting vote. Wallace further called attention to the fact that in the recent Congress, in the vote on the Ship Subsidy bill, Vice-President Sherman gave a casting vote, and that that casting vote was preceded by either one or two motions which related to the same bill, which resulted in a tie, and in which cases the Vice-President gave the casting vote, though they were subsidiary motions. Wallace therefore claimed that unquestionably Senator Wolfe's point of order was not well taken, and that the President of the Senate in this case had full right and authority to give the casting vote.

At this point Wallace gave his vote, aye, and was in the act of declaring that there were 21 ayes, when Senator Caminetti claimed the floor, but Wallace declined to recognize him until the completion of the act in which he was engaged, and proceeded to say: "Ayes 21, noes 20; the motion to reconsider is carried." After the declaration was made, Senator Caminetti claimed that it had been his intention to appeal from the ruling on Senator Wolfe's point of order, and that his rights had been infringed.

Wallace held that he had no means of knowing what the Senator intended, and that it was the right of the presiding officer to finish the item of business that was almost completed, and that without interruption.

After some desultory discussion by various members of the Senate, Senator Curtin made the point that the President was within his rights when he determined to complete the item of business without being interrupted, and Senator Stetson stated that even if Senator Caminetti's appeal had not been stated as such, and recognized, that it would have been out of order because, if the appeal had prevailed it would have been set aside by the Constitutional provision which directs that the President of the Senate shall in the case of a tie cast the deciding vote. In other words, that Senator Caminetti's appeal would have run counter to the plain provision of the Constitution.

The proposed amendment was defeated by a vote of 18 to 21.[822]

Senator Wright moved a further amendment to provide that in all labor disputes it shall be unlawful to threaten injury to person or property.

This proposed amendment was also defeated by a vote of 18 to 21.[822]

The bill was then put upon its final passage, and passed by a vote of 22 to 18.[823]

The fight against the bill was then transferred to the Assembly side of the Capitol.

The measure reached the Assembly on March 23, four days before adjournment. In the ordinary course of legislative business it was referred to the Judiciary Committee.

Under the rules, the committee had ten days in which to report upon the bill. The committee took the bill up on the afternoon of the following day, but before action could be taken, a motion to adjourn prevailed by a vote of 9 to 5. Late that night, however, the committee met in special session to consider the bill, and decided to return it to the Assembly with the recommendation that

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822 The vote on these amendments was the same in each instance, as follows:

For the amendments: Avey, Bell, Bills, Birdsall, Boynton, Curtin, Cutten, Estudillo, Gates, Hewitt, Holohan, Hurd, Larkins, Roseberry, Stetson, Strobridge, Thompson and Wright—18.

Against the amendments: Beban, Black, Bryant, Burnett, Caminetti, Campbell, Cartwright, Cassidy, Finn, Hans, Hare, Juilliard, Lewis, Martinelli, Regan, Sanford, Shanahan, Tyrrell, Walker, Welch and Wolfe—21.

823 The vote by which the anti-injunction bill finally passed the Senate was as follows:

For the bill: Beban, Black, Bryant, Burnett, Caminetti, Campbell, Cartwright, Cassidy, Finn, Hans, Hare, Juilliard, Lewis, Martinelli, Regan, Rush, Sanford, Shanahan, Tyrrell, Walker, Welch and Wolfe—22.

Against the bill: Avey, Bell, Bills, Birdsall, Boynton, Curtin, Cutten, Estudillo, Gates, Hewitt, Holohan, Hurd, Larkins, Roseberry, Stetson, Strobridge, Thompson and Wright—18.

it do not pass. This was done on Saturday morning, March 25.

Under the Constitution, a bill before it can become a law, must be read on three several days in each House, unless, by a two-thirds vote, the House in which the bill is pending shall, as a matter of urgency, dispense with this constitutional provision.

When the Anti-Injunction bill was returned from the committee, it had been read once only. Unless two-thirds of the Assembly, fifty-four members, voted to suspend the constitution, the measure would have to be read on two separate days. There remained three days before adjournment, Saturday, Sunday and Monday.

Saturday and Sunday passed without the bill having been read for the second time. With the coming of the last day of the session, the only way in which it could be put upon its passage was by suspending the Constitution. This required fifty-four votes.

Coghlan of San Francisco introduced a resolution for the suspension of the Constitution. But instead of receiving the fifty-four votes necessary for its adoption, only thirty-four were cast for it to forty against it.[324]

And the Anti-Injunction bill had failed of enactment into law.

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324 The vote on Coghlan's resolution to make the anti-injunction bill a matter of urgency was as follows:

For the resolution: Beatty, Brown, Callaghan, Coghlan, Cronin, Cunningham, Denegri, Feeley, Griffin of Modesto, Guill, Hall, Hayes, Kennedy, Lynch, Maher, Malone, March, McDonald, McGowen, Mullally, Polsley, Rimlinger, Rodgers of San Francisco, Rosendale, Ryan, Sbragia, Schmitt, Slater, Smith, Stuckenbruck, Telfer, Walker, Walsh and Williams—34.

Against the resolution: Beckett, Benedict, Bennink, Bishop, Bliss, Bohnett, Butler, Cattell, Chandler, Clark, Cogswell, Crosby, Farwell, Flint, Freeman, Gaylord, Griffiths, Hamilton, Harlan, Held, Hewitt, Hinkle, Hinshaw, Jasper, Jones, Joel, Judson, Kehoe, Lamb, Lyon of Los Angeles, Mendenhall, Mott, Preisker, Randall, Rogers of Alameda, Stevenot, Sutherland, Tibbits, Wyllie, Young—40.

CHAPTER XXIV.

REAPPORTIONMENT.

Shifting of Population to Large Cities, for the First Time in the State's History Presented Problems in Redistricting the State Which the Legislature Failed to Meet.

The lines of division between Northern and Southern California were more sharply drawn at the 1911 session than at any previous meeting of the Legislature. For the first time in the history of the State, too, a second line of division, that between large centers of population and the rural and suburban districts, became an important factor in shaping legislation. The dividing lines crossed and recrossed. Antagonistic members on one sectional issue found themselves close allies on another. Thus on the question of establishing in Southern California a State School, which it was charged would have approached the State University in importance, the Los Angeles and the Alameda county delegations—in the main progressive, by the way—were hopelessly divided. But when it came to turning the San Pedro waterfront over to the city of Los Angeles and the Oakland waterfront over to Oakland, the two groups became firm allies again.

The key to the situation is found in extraordinary increase in population in Los Angeles and Alameda coun-

ties, and the comparatively slight increase in San Francisco county.

For the ten years ending in 1910, the population of San Francisco county increased from 342,782 to 416,912, an increase of not quite 22 per cent. The increase in Alameda county was nearly 90 per cent, from 130,197 in 1900 to 246,131 in 1910; while in Los Angeles county the increase was from 170,298 in 1900 to 504,131 in 1910, an increase of about 220 per cent.

Thus in 1900, the population of San Francisco county was more than double that of Los Angeles; but in 1910, the population of Los Angeles county was almost 100,000 more than that of San Francisco. This not only touched the vanity of San Francisco politicians, but, as will be seen in a moment, their prestige.

Add to this, the different policies in treating the labor problem pursued by Los Angeles and San Francisco, and the not-very-well-understood struggle for control of the waterfronts of the several California seaports, and we have the basis of sectional division which will play an important part in the politics of California during the next ten years.

The public service corporation element, which, in connection with the gambling and tenderloin interests, controlled until the 1910 election, the politics of the State, sees its opportunity to recover lost ground, by playing section against section, interest against interest. Although hint of this was given at the 1911 session, its more complete expression will come at the sessions of 1913 and 1915.

The primary division that came in the 1911 Legisla-

ture, because of new conditions and issues, was on the reapportionment of the State into Assembly and Senatorial districts.

This reapportionment is made once every ten years, following the Federal census. The Senatorial and Assembly representation is based on population. In theory, each one-fortieth of the State population is entitled to a Senator, and each one-eightieth to an Assemblyman, there being forty members in the Senate, and eighty members in the Assembly.

San Francisco for the ten years ending 1911, had named nine more Assemblymen and four more State Senators than had Los Angeles. But under the new apportionment, if based on population, Los Angeles county would have one more Senator and two more Assemblymen than San Francisco, and San Francisco's legislative prestige would be gone.

Incidentally, the proportionate strength of rural districts would be greatly diminished. The following table will show at a glance where the changes in legislative representation would come:

	Legislative Representation Basis of Population.				Changes.				
	1901 to 1911.		1911 to 1921.		Gains.		Losses.		
	Senate.	Assembly.	Senate.	Assembly.	Senate.	Assembly.	Senate.	Assembly.	Area in Sq. Miles.
Los Angeles...	5	9	8	16	3	7	..	..	4,000
Alameda	4	7	4	8	..	1	..	..	840
San Francisco..	9	18	7	14	..	..	2	4	42
Total for three Counties	18	34	19	38	1	4	..	..	4,882
Total for 55 other Counties	22	46	21	42	..	..	1	4	153,415

Thus Alameda and Los Angeles counties together, on the strict basis of population, would gain three State Senators and eight Assemblymen. On the same basis, two of the Senators and four of the Assemblymen to go to Alameda and Los Angeles counties would be taken from San Francisco county, and one Senator and four Assemblymen would come from the 55 counties of the State, which under the 1901-11 apportionment had sent to the Legislature only twenty-two out of forty Senators, and forty-six out of the eighty Assemblymen. The further reduction would give these fifty-five counties twenty-one Senators, while Alameda, Los Angeles and San Francisco would have nineteen; and forty-two Assemblymen, while the three counties named would have thirty-eight. And the fifty-five counties with the slim legislative representation, embrace of the State's area

153,415 square miles; while the three counties with the big representation contain only 4,882 square miles.

The situation led to two distinct policies on reapportionment, which split the Legislature into two hostile camps, that were as far apart when the Legislature adjourned as when it convened.

The first policy was based on the theory that large centers of population should not be given control of the Legislature. The proponents of this theory in tentative reapportionment schemes, proceeded to take representation from the cities—that is, from Los Angeles and San Francisco—and increase the rural representation to more than, on the basis of population, the country districts were entitled.[325]

This policy found expression in the so-called Randall

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325 Sec. 6 Art. IV of the Constitution provides that, "for the purpose of choosing members of the Legislature the State shall be divided into forty Senatorial and eighty Assembly districts, as nearly equal in population as may be. . . . In the formation of such districts no county, or city and county, shall be divided unless it contains sufficient population within itself to form two or more districts, nor shall a part of any county, or of any city and county, be united with any other county, or city and county, in forming any district."

Assemblyman Randall's interpretation of this section is as follows:

"As has been well heralded, the (Randall) bill was drawn upon the theory that the Constitution was made for the benefit of the State at large as well as the congested centers of population. Some reapportioners insist upon making a census assignment of districts to San Francisco, Alameda and Los Angeles counties first of all, distributing whatever residue there may be to the other 55 counties of the State. Yet the Constitution does not even mention San Francisco or Los Angeles, but that instrument does mention a certain other political organization specifically and emphatically.

"It declares for the protection of the county as organized under the laws of this State. Demolishment of county integrity is placed under the ban in words which cannot be misunderstood: 'no county shall be divided and any portion be attached to any other county in forming such (legislative) district.'

"Here is an express recognition by the Constitution that legislative districts may not all be of the same population, because no two counties are of the same population. And the only requirement of the Constitution that they shall be of equal population is qualified by the words 'as near as may be,' its framers, no doubt

bill, drawn by Assemblyman Charles H. Randall of Los Angeles.

The measure had the support, generally speaking, of members from the country districts, and of most, but not all, of the Los Angeles delegation.

The second policy was not based so much on theory as on desire of the San Francisco delegation to retain its legislative representation. Under this plan, San Francisco would have been allowed at least two Assemblymen and one Senator more than its population warranted. To do this, it was proposed to take from the already pinched country, and to give to San Francisco.[326] This was known as the Welch plan, Senator Welch of San Francisco being its principal sponsor.

The Randall bill, as originally introduced, gave Alameda and Los Angeles counties the legislative repre-

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having in mind the prohibition laid upon destruction of the county unit.

"Following these rules laid down by the Constitution, we are confronted by the fact that 11 or more counties in this State contain from 16,000 to 27,000 population each. The ascertained ratio of population for an Assembly district is 30,000. If strict census figures are to be followed, then these counties will all suffer, for Assembly districts cannot be assigned in full to the cities on the census ratio, and also furnish representation for each of these counties, as contemplated by the highest law of the State.

"A common-sense interpretation of the Constitution would seem to require the erection of an Assembly district in every county which contains a population equal to the major fraction of the ratio, that ratio being 30,000. Other counties of even less population, Imperial for instance, cannot be deprived of an Assemblyman, under the Constitution, because its geographical situation will not allow of its annexation to any other county.

"It is clearly manifest that when a fair apportionment is made to the minority counties, the large centers of population cannot expect to draw a full ratio allotment. The actual ratio left to them is about 40,000 per district, just as provided in the Randall bill."

326 For the decade ending in 1901, the combined legislative representation of San Francisco, Alameda and Los Angeles was only 15 Senators and 30 Assemblymen: the other counties of the State having 25 Senators and 50 Assemblymen. It will be seen that in 1901, the outside counties lost three Senators and four Assemblymen. By the 1901 reapportionment Alameda gained one Senator and one Assemblyman, and Los Angeles two Senators and three Assemblymen.

sentation to which they are entitled on the basis of population, that is to say, eight Assemblymen and four Senators for Alameda, and sixteen Assemblymen and eight Senators for Los Angeles. But San Francisco, entitled on the population basis to seven Senators and fourteen Assemblymen, was given only six Senators and thirteen Assemblymen. This meant a total loss to San Francisco of three Senators and five Assemblymen.

But further reduction was in store for San Francisco.

On March 16, the Randall bill was amended to give Los Angeles[827] fourteen Assemblymen and seven Senators, two Assemblymen and one Senator less than that county would have on a population basis, while San Francisco was given six Senators and ten Assemblymen, one Senator and four Assemblymen less than that city's population warrants.[828] This meant a total loss to San

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827 This reduction did not suit Los Angeles at all. Senator Thompson of Los Angeles did not approve the measure, nor did Meyer Lissner, Chairman of the Republican State Central Committee, and prominent in Southern California politics. The oft-repeated charge of the San Francisco Call that Lissner dictated the Randall bill is not borne out by the developments of the session.

828 At a meeting of San Francisco commercial and industrial bodies, called to protest against the Randall bill, the following resolution was adopted:

"Resolved, That it be the sense of this meeting that we insist that, in the matter of reapportionment of the State of California, San Francisco be treated with that degree of fairness our delegation in the Legislature has invariably extended to all portions of this great State, and we request that the fact that 10 years shall elapse before another reapportionment takes place, and within that time San Francisco shall have added hundreds of thousands of population, shall be taken into consideration; and, be it further

"Resolved, That we ask all friends of California to oppose the Randall bill on reapportionment as unfair in its treatment of San Francisco and that they favor Senate bill No. 780, introduced by Senator Welch."

Said the San Francisco Examiner of the passage of the Randall bill:

"The reapportionment bill jammed through the Assembly proposes a clear steal of four Assemblymen from San Francisco. On the census returns this city is entitled to fourteen Assembly districts. The Randall bill proposes to give but ten."

Francisco of three Senators and eight Assemblymen. Although the amended Randall bill met with the most bitter denunciation from San Francisco interests, it passed the Assembly by a vote of 47 to 20.[329]

In the Senate, the Randall bill went to the Committee on Apportionment and Representation. The measure never left the committee.

The so-called Welch plan of reapportionment did not find expression until the middle of March. The Reapportionment bill which Welch had introduced (S. B. 780) did not give expression to the plan. Indeed, this bill was scarcely a reapportionment measure at all. The first section dealt with Senatorial districts, and merely assigned districts to the several counties, while the second section, dealing with Assembly districts, was a reprint of the old apportionment law of 1901.

But on the evening of March 14, the Senate Committee on Apportionment and Representation met to face the reapportionment problem. It developed immediately that San Francisco, Alameda and Santa Clara [330] counties

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329 The vote by which the Randall re-apportionment bill (A. B., 887) passed the Assembly was as follows:

For the bill: Beckett, Benedict, Bennink, Bishop, Bliss, Bohnett, Brown, Butler, Cattell, Chandler, Clark, Cogswell, Cronin, Farwell, Flint, Freeman, Gaylord, Griffiths, Guill, Hall, Hamilton, Harlan, Held, Hinshaw, Jasper, Jones, Judson, Lamb, Lynch, Lyon of Los Angeles, Maher, Mendenhall, Mott, Polsley, Preisker, Randall, Rodgers of San Francisco, Rogers of Alameda, Rutherford, Slater, Stuckenbruck, Sutherland, Tibbits, Walker, Wyllie, Young, and Mr. Speaker—47.

Against the bill: Coghlan, Cunningham, Denegri, Feeley, Gerdes, Hayes, Joel, Kennedy, Lyon of San Francisco, March, McDonald, Mullally, Nolan, Rimlinger, Rosendale, Sbragia, Schmitt, Smith, Telfer, and Williams—20.

330 As a matter of fact the so-called Welch plan—which had been worked out by Senator Walker of San Jose, by the way—hinged on the situation in Santa Clara county. That county has long been represented in the Legislature by two Senators and three Assemblymen. The 1910 census gives Santa Clara a population of 83,539. This entitles her, on the basis of population, to one Senator, with 24,101 of population toward a second; and to two As-

had combined on a scheme of reapportionment and had the votes to put it through the committee.

In a riot of generosity, the combination gave Los Angeles county—population 504,131—eight Senators and sixteen Assemblymen; San Francisco—population 416,-912—eight Senators and sixteen Assemblymen; Alameda—population 246,131—four Senators and eight Assemblymen; and Santa Clara—population 83,539—two Senators and three Assemblymen, a total for the four counties of twenty-two Senators and forty-three Assemblymen.

The other fifty-four counties of the State were allowed eighteen Senators and thirty-seven Assemblymen.

After this generous division, San Francisco, Los Angeles, Alameda and Santa Clara representatives considerately withdrew, to let the representatives of the remaining fifty-four counties of the State "scrap it out" for their eighteen Senators and thirty-seven Assemblymen.[331]

The Senators representing the fifty-four counties

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semblymen, with 24,101 of population toward a third. Inasmuch as this extra population can not, under Constitutional provisions, be added to another county for purposes of reapportionment, Santa Clara presents one of the hardest of the many hard problems of equitable reapportionment.

Ordinarily, Santa Clara would have been allowed one Senator and three Assemblymen. This would be about as fair a reapportionment as could be made, but even so, Santa Clara would suffer. But under the Welch plan, Santa Clara was given its old representation. This gave the county one Senator for each 41,769 of population, 17,669 less than the 59,438 required on the basis of population for a Senatorial district, and three Assemblymen, an Assemblymen for each 27,846 of population, or 1,873 short of the 29,719 required for a full-sized Assembly district.

331 Under this arrangement the country districts would have been large. For example, Fresno county would have had one Senator for 75,651 of population; Sonoma and Marin, combined in one Senatorial District, one Senator for 73,508 population. A Senatorial District in Los Angeles county would have required 64,016 inhabitants. But San Francisco would have been allowed a Senatorial District for every 52,115 population. Santa Clara county

spent much time in efforts to come to an understanding.[332] No understanding was reached. And, too, differences developed in the Alameda-San Francisco-Santa Clara combination, which took in, by the way, several members from outside counties.

The committee had adjourned on March 14 to meet March 16. But the committee did not meet on the 16th, nor did it meet until March 24, when the Legislature was on the eve of adjournment.

In the meantime rumors had multiplied that no reapportionment bill would be passed. Such an accomplishment would be distinctly to the advantage of San Francisco, and to the disadvantage of Los Angeles. If a reapportionment bill were passed, San Francisco's legis-

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would have fared even better, getting a Senatorial District for each 41,769 inhabitants.

The vote by which the Welch plan was put through the committee on the night of March 14 was on Finn's motion that San Francisco be given eight Senators and sixteen Assemblyman. It was as follows:

For the Welch plan: Birdsall, Burnett, Campbell, Estudillo, Finn, Sanford, Stetson, Strobridge, Walker and Welch—10.

Against the Welch plan—Bell, Boynton, Cutten, Hewitt, Roseberry and Thompson—6.

332 Some of the divisions suggested thoroughly exasperated some of the members from the interior. A fairly good example of this was furnished by the situation in the thirty-second Senatorial District represented by Senator E. O. Larkins.

The District at present includes the counties of Kings, Tulare and Kern.

During the last decade these counties have waxed prosperous. Their population has increased to 89,385. This is 29,947 of population more than is required for a Senatorial District established on the population basis, and 37,385 more than the proposed San Francisco Senatorial Districts of 52,000 population would contain.

More in sorrow than in anger Senator Larkins was preparing to accept this extraordinary reapportionment, when, to meet the demands of other sections, Kings county was cut out of his district, and hooked up to Monterey and San Luis Obispo, with the distressing probability that some unknown quantity would be hooked up to Tulare and Kern.

Far from attaining increased harmony by the change, the new plan started further wrangling. The entire group of counties of which Kings is the center, became involved. Agreement seemed out of the question. From wrangling the country members fell to sulking. Gradually, the full meaning of the Welch plan of reapportionment was forced home to them.

lative representation would be reduced at least one Senator and two Assemblymen, with some probability that the reduction would be even greater.

On the other hand, the passage of the bill meant substantial increase in the Los Angeles legislative delegation.

But if no bill were passed, the legislative representation of the rival communities would, for another two years, unless there were an extra session, continue what it had been, namely, nine Senators and eighteen Assemblymen for San Francisco, and five Senators and nine Assemblymen for Los Angeles.

When the committee finally got together on the 24th, Alameda was found to have deserted San Francisco and Santa Clara, and to be in combination with Los Angeles. The Senators from the interior were confused and without definite plan. The Alameda-Los Angeles combination[333] easily controlled the committee. The test of its strength came when Senator Walker moved that the

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333 Senator Hewitt of Los Angeles, as spokesman of the new combination, announced its policy to be as follows:

"We must," said Hewitt, "in reapportioning the State, follow the provisions of the State Constitution. The Randall bill, which has passed the Assembly and which is before this Committee, is obnoxious to Los Angeles, for it gives that county only seven Senators when it is entitled to eight.

"The bill is obnoxious to San Francisco because it gives that city only six Senators. In readjusting these differences we must follow the law.

"This can be done easily in reapportioning the large centers of population. There should be no difficulty in fixing the reapportionment of San Francisco and Los Angeles.

"Such reapportionment is a matter of State-wide concern. It is not a matter of the interest of this city or that. It is a matter in which the whole State is concerned.

"Prospective growth of a given community is not to be considered. The Constitution makes no provision for prospective growth.

"The situation calls for exercise of a just rule for all. That rule will follow the provisions of the State Constitution. It will not draw distinctions between the cities and the country as is done in the Randall bill; nor distinctions between sections of the State, as is done in the Welch bill."

Randall bill be amended by substituting in it the provisions of the Welch reapportionment plan. The motion was lost by a vote of 6 to 8, the Alameda and Los Angeles members voting against the motion.[334]

After a short recess to give the several factions opportunity to confer, Hewitt moved that a sub-committee of five be appointed to prepare a scheme of reapportionment for the consideration of the Committee.

The San Francisco members of the Committee, and some of their supporters, refused to vote on the ground that several sub-Committees appointed at the meeting ten days before, when the San Francisco-Alameda combination was running things, had not been discharged. Nine members, however, voted for Hewitt's motion.[335]

Chairman Thompson appointed Hewitt, Strobridge, Roseberry, Sanford and Welch to serve on the sub-Committee.

Welch asked to be excused from serving. But Chairman Thompson firmly refused to excuse him, thus closing the incident.

So far as the writer knows, the sub-Committee never reported. Three days later the Legislature adjourned without any reapportionment bill having been passed.[336]

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334 The vote on Walker's motion was as follows:

For Walker's motion: Burnett, Campbell, Finn, Sanford, Walker, and Welch—6.

Against Walker's amendment—Bell, Birdsall, Boynton, Cutten, Hewitt, Stetson, Strobridge, and Thompson—8.

335 The nine members who voted for Hewitt's motion were: Bell, Birdsall, Boynton, Hewitt, Stetson, Strobridge, Thompson, Cutten and Roseberry.

336 After the Legislature had adjourned, Assemblyman Randall issued a statement in which he denounced the Welch plan of reapportionment. In concluding his statement Mr. Randall said:

"The Welch-Walker combination in the Senate, which proposed to hand over to the three largest cities of the State almost one-half of the legislative body, if it had been successful, would have

While the reapportionment fight was on, the remark was frequently made that it was fortunate that the differences between Los Angeles and San Francisco are so great that those two cities can never enter a legislative combination with Alameda, otherwise the three counties could arbitrarily control the policies of the State.

But even as this observation was most popular, a combination between the legislative representatives of the three cities was made, in which San Diego joined, to bring the State's waterfront properties under control, as near as can be, of the municipalities upon which these properties border.

This combination included in the 1911 Legislature nineteen Senators and thirty-five Assemblymen. On the basis of population the four counties will have in the 1913 Legislature twenty Senators and forty Assemblymen, or one-half the legislative representation of the State. The events recorded in the next chapter furnish some indication of what this may mean to the remaining fifty-four counties.

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committed a blacker political crime than Abraham Ruef or the Southern Pacific Railroad ever dreamed of perpetrating.

"It would not merely be a crime of 10 years' standing, but it would exist for all time to come, for the next reapportionment would be completely in the hands of these cities. The Southern Pacific political octopus must be concealing several good laughs in its sleeve when it views the efforts to create city domination of the California Legislature. The city is the home of the railroad's political allies, booze, vice, slums and special privilege.

"The quickest and surest way to hand back to the Southern Pacific political bureau the legislative control of this State is to place cities in the saddle. The S. P. will do the rest."

In discussing the reapportionment problem, the San Francisco Chronicle, in its issue of March 15, 1911, said of the San Francisco legislative delegation: "So far as this city (San Francisco) is concerned it is of no great consequence what representation we have in the Legislature, for the people whom we usually send there are, for the most part, of no earthly use to us or anybody else. We might as well have three—better if they were good men—as fifty. Those we do send are mostly those whom all honest men in the Legislature feel it necessary to watch."

CHAPTER XXV.

THE TIDE LANDS CONTROVERSY.[337]

San Francisco, Los Angeles, San Diego and Alameda Delegations United to Change the Policy from State Waterfront Control to Municipal Control.

The four-cornered fight at the 1911 session of the Legislature for municipal control of the State's waterfront, which involved San Francisco, Alameda, San Diego and Los Angeles, had its origin in the years-long

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337 In the Act of Congress for the admission of the State of California into the Union, one of the express provisions under which such admission was granted was "that all the navigable waters within the said State shall be common highways and forever free, as well to the inhabitants of said State as to the citizens of the United States, without any tax, impost or duty therefor."

Article XV of the State Constitution (1879) provides:

"Section 1. The right of eminent domain is hereby declared to exist in the State to all frontages on the navigable waters of this State.

"Sec. 2. No individual, partnership, or corporation, claiming or possessing the frontage of tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

"Sec. 3. All tide lands within two miles of any incorporated city or town of this State, and fronting on the waters of any harbor, estuary, bay, or inlet, used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations."

Judge Bordwell in his decision in the San Pedro water front case says:

"In this country, the courts from the beginning adopted the doctrine that the title to the lands under the flow of the tides is vested in the State as the sovereign prerogative; or, as it is frequently expressed, such title is possessed by the State by virtue of her sovereignty. This tenure, by which the State is said to hold title to the tide lands, has been characterized by the courts of this country as 'a title held in trust for all the

fight maintained by the city of Los Angeles to prevent the Southern Pacific Railroad Company from monopolizing harbor facilities in Southern California.

More than twenty years ago, Los Angeles petitioned Congress to build a breakwater at San Pedro, which would make the port one of the safest and best harbors on the Pacific Coast. Collis P. Huntington, then President of .the Southern Pacific, at that time a power in finance and politics, took occasion to direct that Congress do nothing of the kind, but improve the harbor at Santa Monica, some miles distant from San Pedro, where the Southern Pacific had large holdings.

This brought on a fight between Los Angeles and the Southern Pacific, which lasted for years. Huntington spent years in endeavoring to demonstrate that Santa Monica was the only feasible harbor. Los Angeles, ably backed by the then United States Senator, Stephen M. White, produced figures and facts to prove that Huntington was wrong; that the best development of Southern California depended upon the improvement of San Pedro Bay.

And Los Angeles won.

After overcoming almost unbelievable obstacles which, through the influence of the Southern Pacific, were thrown in their way, the Los Angeles people have the

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people.' Some writers criticize the use of the term 'in trust' as inapt to convey an exact understanding of the quality of the tenure. But the courts have long employed the term to express the character of the State's title and it may be considered as firmly established and proper to state as a proposition of law, in this country, that tide lands are held by the State in trust for all of her citizens."

It may be that when California politicians take a view of State well-being that shall be broader than sectional, the law governing the State tide lands will be enforced, and private ownership and control under any guise be brought to an end.

satisfaction of seeing the San Pedro breakwater nearing completion.

But San Pedro harbor, even after the defeat of the railroad obstructionists, was still a physical ten or a dozen miles distant from the city limits of Los Angeles. Los Angeles accordingly annexed a strip of territory which took that city to the city limits of San Pedro.

The State law prevented the annexation of the city of San Pedro. So the State law was amended to permit the people of San Pedro to say whether they wanted to join with Los Angeles. They concluded that they did. Los Angeles was willing and the two cities became one.

Los Angeles was at last down to tide-water. Plans were perfected by which Los Angeles was to spend $10,000,000 in making San Pedro one of the finest harbors in the country. But a new difficulty presented itself.

While Los Angeles had been fighting at Washington to secure San Pedro harbor, the Southern Pacific Company and certain other private interests had secured the strategic points of the San Pedro tide lands.

Los Angeles accordingly contested the titles of these private interests in the courts. The Superior Court of Los Angeles county declared against the private interests. But this did not give Los Angeles the tide lands which were required for that city's plans for harbor development.

The court held that the San Pedro tide lands are the property of the State of California.[338]

This, however, was all for which Los Angeles was

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338 See opinion of Superior Judge Walter Bordwell, in The People of the State of California vs. Southern Pacific Railroad Company et al. (No. 64,535), filed January 3, 1911.

contending. That city's object was, in the name of the State, to oust the private interests wrongfully holding the San Pedro waterfront, and then secure from the State grants which would warrant Los Angeles going on with the contemplated harbor improvements.

Such was the situation when the 1911 Legislature convened. In pursuance of Los Angeles' plans, Senator Hewitt, on January 19, introduced Senate Bill 445, which granted the coveted tide lands to Los Angeles and its successors in trust for the uses and purposes specified.

And at once the measure met the powerful opposition of San Francisco. The reason for the opposition was very frankly stated to be based on the fear that Los Angeles would secure advantage over San Francisco which San Francisco could not meet.[339] This opposition took form, not only against the San Pedro tide land bills,

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339 This fear found official expression in a communication sent Senator Wolfe by the Merchants' Association of San Francisco. The communication read as follows:

"San Francisco, February 28, 1911.

"Hon. E. I. Wolfe, Senate Chamber, Sacramento, California:

"With reference to the bills pending for cession of tide lands to the cities of Los Angeles, San Diego and Oakland, the Merchants' Association of San Francisco desires to co-operate with these cities in any reasonable effort for the improvement and maintenance of their harbors. The association, however, believes that the cession of tide lands to these cities with an opportunity for them to assume control of their respective harbors and regulate charges on shipping and with the power that they would have of raising funds for improving and maintaining the harbors by taxing the property of their citizens instead of by raising funds from charges on shipping would give them an opportunity of entering into unfair competition with the harbor of San Francisco, which is now under State control, and can be maintained only by charges upon shipping. If such unfair competition were to be permitted or encouraged by the State it might seriously affect the revenues that could be raised in San Francisco harbor from the charges upon shipping and would affect the bonds which have been issued and which have been authorized and reflect on the credit of the State. We therefore urge that in any cession of tide lands to any of these three cities some scheme be provided for State control and the State be given authority to fix at least a minimum charge on shipping. For similar reasons we are opposed to any law being passed with reference to pilot charges except a uniform law affecting all harbors alike. We would request you to present

but against other measures which aimed to improve harbor conditions at San Pedro.

The clash between Los Angeles and San Francisco over this issue, found its first open expression on February 15, when the so-called San Pedro Pilot bill (Senate Bill 874) came before the Senate for final passage.[340] This measure repealed the law which fixed the pilots' fees for the ports of Wilmington and San Pedro. It was claimed that these fees were extortionate, that they placed an unjust burden upon the shipping of the two ports and imposed an unwarranted handicap upon the development of the harbors. On this ground, the Los Angeles delegation urged that Senate Bill 874, repealing the law under which this extortion was practiced, be passed.

When the measure came up for final passage, however, San Francisco was quick to the fore with objection. Welch of that city moved the measure be re-referred to the Judiciary Committee. This action was taken.[341]

Senate Bill 874 remained in the Senate Judiciary

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these views to the appropriate committees, and would request that you secure the publication of this communication in the Senate Journal.

"THE MERCHANTS' ASSOCIATION of San Francisco.
"M. H. ROBBINS, JR., President."

This attitude was, however, condemned by other San Francisco interests. "The suggestion," said the San Francisco Chronicle, in discussing the matter, **"that the State should intervene to prevent any other port from competing with us is humiliating. If San Francisco with all its natural advantages cries out for help against the competition of an artificial port most self-respecting persons would wish to move out of San Francisco."**

340 Senate bill 445, the Los Angeles tide lands bill, had, however, already (Feb. 3) on its third reading been re-referred to the Judiciary Committee.

341 The Los Angeles press was bitter in it denunciation of the course taken by San Francisco members. The Los Angeles Herald, for example, in its issue of Feb. 21. in an editorial article, "The Hand of the S. P.," said:

"Back of the move being made at Sacramento by Senator Wolfe and his associates from San Francisco to throttle the plans of Los Angeles for a great municipally-owned harbor

Committee until March 18, when, with tide land bills affecting the waterfronts of four centers of population, it was, under extraordinary circumstances, reported out with the recommendation that it be passed.

The re-referring of this bill to the Judiciary Committee, however, took the whole tide land controversy before that body. There it developed that San Diego and Oakland also had measures before the Legislature which granted those communities important State tide land properties, while San Francisco had proposed a bill

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looms the sinister hand of the Southern Pacific Railroad. And why not? It is true that the Southern Pacific has spent hundreds of thousands for terminal properties in San Francisco to dollars that it has spent in Los Angeles. Is it not to the interest of the S. P. to crush this plan fostered by the South that recently has thrown off the Herrin yoke? It is but natural that the big railroad corporation, always noted for discriminating against Los Angeles in favor of San Francisco, should wish to build up commerce where it has expended the most money, and take this commerce away from a city where the road's policy has been niggardly and where, in addition, the yoke of the road's political boss has been broken.

"Wherefore it behooves the people of Southern California to rise and thwart the plans of San Francisco legislators, representing as they do the old order of things—the Herrin idea—and by a mighty demonstration make the harbor of Los Angeles a municipal port. Los Angeles is a well-governed city. Under municipal control her harbor will be one of the greatest in the world, and this is the very thing the reactionaries at Sacramento are trying to prevent."

Nor were the people of Los Angeles at all backward in charging that the Southern Pacific Company was back of the opposition to the bills.

"The real opponents of Los Angeles Harbor," insisted George Alexander, Mayor of that city, before the Senate Judiciary Committee on the evening of Feb. 24, "is the Southern Pacific Railroad Company. All that we ask of this Legislature is that you give us permission to develop our harbor in a way that will bring the greatest good to the greatest number."

"I do not believe that this opposition comes from San Francisco," said Joseph Call, one of the best known authorities on railroad matters in the country. "I do not believe that San Francisco wants to bottle up our harbor. The real opposition comes from the railroads.

"It is a matter of common knowledge," Call continued, "that the Standard Oil controls the three great railroads to the Coast, the Southern Pacific, Western Pacific and Santa Fe. By concerted action they have steadily advanced rates. The only relief California can get will come through the development of the State's water fronts. That development the railroads will prevent if they can."

which granted to that city not only the tide lands, but all the extensive improvements which the State has made on the San Francisco waterfront, and which have cost upwards of $30,000,000.[342]

The Judiciary Committee authorized the appointing of a subcommittee to deal with all the tide land measures. This subcommittee consisted of Wolfe of San Francisco, Stetson and Tyrrell of Oakland, Hewitt of Los Angeles, Wright of San Diego, and Caminetti of Amador,[342a] the last named being the only member of the sub-committee whose district did not have a tide lands measure before the Legislature.[343]

At the time the subcommittee was appointed, the San Francisco and Los Angeles delegations were as far apart in the tide lands controversy as the poles. Alameda and San Diego were quietly awaiting the psychological moment to make a decisive move. And then came word to the San Francisco delegation, from the San Francisco Chamber of Commerce, to give Los Angeles what that city wanted.

As this order from the San Francisco Chamber of

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342 Senate bill 1200. The measure reads as follows:

"The interest of the State of California in and to all those certain lands, wharves, buildings, docks, boats, dredgers, railroads, and any and all property, real, personal and mixed, together with all the improvements, rights, privileges, easements, appurtenances connected therewith or in any wise appertaining thereto now in the possession of the State of California, and under the jurisdiction and control of the State Board of Harbor Commissioners and situated in the City and County of San Francisco, is hereby granted to the City and County of San Francisco."

342a Thompson of Los Angeles later on became a member of this sub-committee.

343 Senator Caminetti proposed that the State institute legal proceedings—as the city of Los Angeles in the name of the State had done at San Pedro—to recover tide lands at San Diego, Oakland, Eureka and such other points as might be determined, where the properties had passed into the hands of private interests. Eventually, this will unquestionably be done.

Commerce was the reverse of what the San Francisco Merchants' Association was insisting upon, the San Francisco legislative delegations found the situation confusing.

A meeting of San Francisco business men and legislators was accordingly held at the rooms of the San Francisco Chamber of Commerce. At that meeting, it developed that representatives of the San Francisco Chamber of Commerce had two years before entered into a "gentlemen's agreement" with the commercial bodies of Los Angeles to support Los Angeles in its endeavor to get control of San Pedro Harbor, on condition that the Los Angeles commercial bodies assist in the defeat of the India Basin bonds, then pending before the State.

These India Basin bonds, it may be said, were for one of the most important harbor improvements at San Francisco ever undertaken. Outside of a few special interests San Francisco was and is practically a unit for the improvement. Although these special interests made an expensive campaign to defeat the India Basin bonds, the vote against the bonds in San Francisco was only 10,154, while the vote for them was 31,448.

The remainder of the State gave a substantial vote for the bonds, but at Los Angeles the vote was 30,839 against them, and only 5,552 for them.[344] This adverse Los Angeles vote defeated the bonds. The Los Angeles

[344] So important is this India Basin improvement for the best development of San Francisco, that in 1910 the India Basin bonds were for a second time submitted to the people. At this second submission, the San Francisco Chamber of Commerce joined with the Merchants' Exchange and Merchants' Association of that city in urging their ratification. Although the special interests opposing the improvement expended, it is estimated, upward of $100,000 to defeat the bonds, while the combined commercial bodies spent less than $2000, the bonds were ratified, and the funds for the improvement made available.

commercial bodies certainly lived up to their part of the agreement.

When the time came to turn the San Pedro waterfront over to Los Angeles, the Los Angeles commercial bodies called upon the San Francisco Chamber of Commerce to fulfill its part of the agreement.

At the San Francisco meeting, the Los Angeles people put it, in effect, in this way:

"A pledge was given us two years ago by your commercial organizations that if we aided in defeating the bonds of the India Basin Act, you would aid us in our endeavor to get control of our harbor when the time was ripe."

The San Francisco Merchants' Association denied that it was party to any such understanding. It developed that the pact had been made by members of the San Francisco Chamber of Commerce and the Shipowners' Association. Nevertheless, it was contended that the members of the San Francisco delegation in the Legislature should abide by this agreement, made before they were elected, of which they had no knowledge, and which was predicated on a pledge given to members of the San Francisco Chamber of Commerce and Shipowners' Association by the commercial bodies of a rival city, to do San Francisco a serious injury.

But the contention that the agreement should be kept prevailed. Word was sent members of the San Francisco legislative delegation to discontinue opposition to the Los Angeles tide lands measure.

Other motives may of course have governed them, but about this time, the opposition of the San Francisco

Senators, to the Los Angeles tide lands bills, with the exception of the opposition of Senator Welch, ceased.

Out of the San Francisco conference grew another "gentlemen's agreement," namely, that when San Francisco is ready to take over the State's waterfront property in that city, Los Angeles would assist her in the enterprise.[345] As a step toward this end, it was decided that a bill should be introduced, under the terms of which San Francisco would be authorized to issue bonds to redeem State bonds that may have been issued for the benefit of the San Francisco waterfront. Such a bill

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345 Not the least astonishing feature of this arrangement between the commercial bodies of San Francisco and Los Angeles is the frankness with which it was discussed. The San Francisco Chronicle, for example, in its issue of February 27, 1911, said:

"The agreement reached between the Chambers of Commerce of Los Angeles and this city marks the beginning of the end of the control of the harbor fronts of our ports by the State. Los Angeles is to be given control of the San Pedro harbor without opposition, and San Francisco is assured of the support of Los Angeles whenever we are ready to take the same step here.' And agreements of that kind are always kept.

"In due time San Diego and Eureka will take the same steps, so far as their fronts have not passed into the hands of corporations. Corporations or individuals already control the smaller ports and landing places subject to public regulation of charges, and if they do not abuse their powers they are likely to be undisturbed."

On another occasion the Chronicle said in an editorial article:

"The proper representatives of this city have made an agreement with representatives of other seaport cities to the effect that we will help them get what they want now and the other cities shall help us to get the same things when we want it.

"We should keep our agreement and trust to the other cities to keep theirs."

The fact must not be lost sight of that in the next Legislature on a basis of population, the "other cities" referred to will, with San Francisco, have in the Legislature twenty of the forty Senators, and forty of the eighty Assemblymen. If to these be added the representatives from Humboldt county, where at Eureka the same tide lands problem must be met, the five counties will have a clear majority of the Legislature, twenty-one members in the Senate, and forty-two in the Assembly, while the other fifty-three counties of the State will be represented by only nineteen Senators and thirty-eight Assemblymen.

was, a few days later, introduced in the Senate by Wolfe.[346] The measure became a law.

The introduction of this bill, with Senate Bill 1246, which granted to the city of Long Beach the State's tide and submerged lands within the boundaries of that city, completed the setting of the scene for the passage of all the tide lands bills, by the united delegations of the four centers of population interested, San Francisco, Los Angeles, San Diego and Oakland.

It will be remembered that before the commercial bodies of San Francisco and Los Angeles lent their good offices to the solving of the tide lands problem, the various tide lands measures had been entrusted to a subcommittee of the Senate Judiciary Committee. The subcommittee had been appointed about the middle of February, but it was not until the middle of March that action was taken.

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346 How the interior views this proposed turning of the San Francisco water front over to that city is well expressed in an editorial article which appeared in the Fresno Republican of February 24. The article was headed "Pygmy Politics," and reads:

"According to the Chronicle the reason San Francisco can not get control of its water front, while Los Angeles probably can, is that San Francisco sends 'pygmies to Sacramento, to deal with the able and united phalanx which the South sends up.' This is, of course, not wholly true, as to all the representatives from San Francisco, some of whom are first class men, but it has always been notoriously true of the majority of the delegations sent up from San Francisco, and it is undoubtedly as the Chronicle suggests, one of the reasons why Los Angeles has been able to get some things which San Francisco could not.

"But is it not also one of the reasons why San Francisco ought not to control its water front, even if other cities do? For the Legislature is not the only place where San Francisco selects 'pygmies' to represent it. There are pygmies on the Board of Supervisors, there is a particularly pin-headed one in the Mayor's chair, and there would be three petty district bosses doing politics with the water front if San Francisco had the choosing of them. The commerce of the port of San Francisco is the commerce not of San Francisco merely, but of California, and the world. San Francisco may have the right to misgovern itself in local affairs. It has not the right to impose that misgovernment on general affairs. If San Francisco wants its water front, let it first demonstrate its capacity to run it, by running something else honestly."

When the Senate adjourned for the noon hour on March 17, the subcommittee was called together. It was proposed to decide upon a course of action. Caminetti, however, entered such vigorous protest that he secured postponement until 7 o'clock that evening.

At the 7 o'clock meeting Caminetti moved that provision be made to recover tide lands that have been wrongfully and illegally passed into private hands. The motion failed to carry.

The subcommittee, Caminetti dissenting, thereupon proceeded to accept forms of bills for the transfer of tide lands to the several municipalities interested.

As the subcommittee was acting for the Judiciary Committee, it was supposed, of course, that the subcommittee would give the Judiciary Committee opportunity to pass upon the proposed measures.

Between the Friday meeting of the subcommittee and Saturday afternoon the Judiciary Committee held no meeting.

Saturday afternoon Senator Stetson, Chairman of the Senate Judiciary Committee, asked permission to introduce a Committee report out of order.

This permission was accorded as a matter of course.

The report turned out to be the report on the tide land bills, as prepared by the subcommittee.

Senator Shanahan raised the point of order that the bills named in the report had been referred to a subcommittee by the Judiciary Committee, that the subcommittee had filed no report, and had not been discharged by the Judiciary Committee, that, therefore, the bills were still in the custody of the subcommittee.

Senator Wolfe was presiding at the time and ruled the point not well taken, on the ground that permission had been granted the Judiciary Committee to file its report out of order.

The fact developed during the discussion which followed that members of the Judiciary Committee, without meeting of the Committee, had consented to the report's being presented to the Senate. One member of the Committee, however, Roseberry, had refused to agree to this course.

Roseberry took occasion to enter his protest against the irregularity of the proceedings. Boynton joined Roseberry in declaring the course to be irregular.

Boynton, however, suggested that the report of the Committee be permitted to stand, on condition that Caminetti be authorized to file a minority report. This was finally decided upon.

But immediately after this permission had been given Caminetti, the Tide Lands bills were taken up one by one, and amended according to the recommendations of the subcommittee, the way thus being prepared for their final passage.

The Senate passed the Oakland and the Los Angeles Tide Lands bills on March 20, and the San Diego bill on March 23.

Of the nineteen Senators from San Francisco, Oakland (Alameda county), Los Angeles and San Diego, seventeen voted for the Oakland bill, and fourteen for the Los Angeles bill. Senator Welch of San Francisco was the only one of the nineteen to vote against the measures. Hare did not vote at all on either bill, while

Beban and Finn of San Francisco, and Hans of Oakland, did not vote for the Los Angeles measure.[347]

Senator Cutten, in speaking against the passage of these bills voiced the sentiment of the members from the interior, who opposed the transfer of the State's property. He stated that if there be one city in the State entitled to its tide lands that city is Los Angeles.

"But," said Cutten, "I do not believe in the policy which is being pursued here. If the cities hold that they

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347 The Senate votes on the Tide Lands bills were as follows, the names of the Senators from Oakland (Alameda County) San Francisco, Los Angeles and San Diego being printed in black:

For the Los Angeles bill (Senate Bill 445): Avey, **Bell, Bills**, Black, **Bryant, Burnett**, Cartwright, **Cassidy**, Estudillo, **Gates, Hewitt, Hurd**, Juilliard, Martinelli, **Regan**, Rush, Sanford, **Stetson, Strobridge, Thompson, Tyrrell, Wolfe**, and **Wright**—28.

Against the Los Angeles bill: Senators Birdsall, Boynton, Caminetti, Cutten, Holohan, Larkins, Lewis, Shanahan, **Walker**, and **Welch**—10.

For the Oakland bill (Senate Bill 399): Avey, **Beban, Bell**, Bills, Black, **Bryant, Burnett**, Cartwright, **Cassidy**, Estudillo, **Finn, Gates, Hans, Hewitt, Hurd**, Juilliard, Martinelli, **Regan**, Rush, **Sanford, Stetson, Strobridge, Thompson, Tyrrell, Wolfe**, and **Wright**—26.

Against the Oakland bill: Birdsall, Caminetti, Cutten, Holohan, Larkins, Lewis, Roseberry, Shanahan, Walker, and **Welch**—10.

A companion bill to the Oakland measure (Senate Bill 451), passed the Senate on March 22 by the following vote:

For Senate Bill 451: Avey, **Beban, Bell**, Bills, Black, Cartwright, **Cassidy**, Curtin, **Finn, Hans**, Hare, **Hewitt, Hurd**, Juilliard, Martinelli, Rush, **Stetson, Strobridge, Thompson, Tyrrell, Welch**, and **Wolfe**—22.

Against Senate Bill 451: Birdsall, Boynton, Caminetti, Cutten, Hohohan, and Lewis—6.

The Senate vote on the San Diego Tide Lands bill (Assembly Bill 998), was:

For the San Diego bill: **Beban**, Bills, Black, **Bryant**, Cartwright, **Cassidy**, Curtin, Estudillo, **Finn, Gates, Hans, Hurd**, Juilliard, Martinelli, **Regan**, Rush, **Stetson, Thompson, Tyrrell**, Walker, **Wolfe**, and **Wright**—22.

Against the San Diego bill: Birdsall, Boynton, Caminetti, Cutten, Holohan, Larkins, Lewis, Roseberry, and Shanahan—9.

The Long Beach Tide Lands bill (Senate Bill 1246), was in reality a companion bill to the Los Angeles Tide Lands bill. The vote by which it was passed was:

For the Long Beach bill: Avey, **Beban, Bell**, Bills, Black, **Bryant, Cassidy**, Estudillo, **Gates, Hewitt, Hurd**, Juilliard, Martinelli, **Regan**, Rush, Sanford, **Stetson, Strobridge, Thompson, Wolfe**, and **Wright**—21.

Against the Long Beach bill: Birdsall, Boynton, Hare, Larkins, Lewis, Roseberry, Shanahan, and Walker—8.

should only lease these lands under their proposed Trusteeship, why cannot the State lease the lands to the cities?"

Shanahan stated that his position was that of Senator Cutten. He insisted that he had the greatest admiration for Los Angeles' patriotism and pluck in fighting the Southern Pacific for the recovery of these lands, but he could not subscribe to the policy under which the proposed transfer was to be made.

"But it is idle to talk on the question," concluded Shanahan, impatiently. "Oakland, Los Angeles, San Francisco and San Diego have agreed among themselves to pass these bills and will pass them. They have the votes to carry them. But I owe it to my State to protest."

Senator Larkins as vigorously warned the Senate of the dangers of the new policy which they were about to adopt.

The members from the four centers of population directly interested, waited indulgently until the protestants were done. Then the bills were passed with all the deadly certainty and dispatch of the slide of the knife of a guillotine.

The San Diego bill had already passed the Assembly, but the other measures were all Senate bills, and had yet to be acted upon in the Lower House. Before they could be acted upon by the Assembly two matters came up which threatened the carrying out of the "gentlemen's agreement," made outside the Legislature, by which San Francisco was to support the Los Angeles bill, and at some future day, when San Francisco is ready, Los An-

geles is to join with San Francisco to grant the State's property on the San Francisco waterfront to that city. The new conditions which threatened the "gentlemen's agreement" were:

(1) Because of labor measures—Members of the Los Angeles delegation opposed the Anti-Injunction bill,[348] and were generally against labor measures. Toward the end of the session, certain San Francisco Assemblymen, because of Los Angeles' attitude on labor, thought to "get even" with Los Angeles by defeating the Los Angeles Tide Lands bill.

(2) Reapportionment—The greater part of the San Francisco delegation saw in the anxiety of the Los Angeles members over their Tide Lands bill, opportunity to force the Los Angeles delegation into a compromise on reapportionment which would give San Francisco greater legislative representation than her population warrants.

In addition to the opponents who were moved by these considerations, were those members of the Assembly who realized that the new departure in the disposition of the State's tide lands involved the transfer of State properties worth hundreds of millions of dollars to individual municipalities, and resisted the new policy as unwise, and against the best interests of the State.

When the Los Angeles bill came before the Assembly for final passage, Preisker moved to amend, by striking

348 See Chapter XXIII.

out the word "forever," which made the grant perpetual, and further safeguarding the State's interests.[349]

The amendment was hotly contested, and finally defeated by a narrow margin of 31 to 37.[350]

The bill was then passed by a vote of 51 to 19.[351] Im-

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349 Preisker's proposed amendment was in full as follows:

"In line 9, section 1, page 1, of the printed bill, strike out the word 'forever.'

"Also: At the end of section 1, on page 2, of the printed bill, strike out the period after the word 'purposes,' and insert the following: "; and further reserving in the people of the State of California the absolute right at any time to take over all rights, title or interest by this Act given, upon the non-fulfillment by said city of Los Angeles of any of the conditions in this Act contained, and also reserving the right, at any time after fifty years from the taking effect of this Act, to take over all the rights, title or interest by this Act given, upon the payment by the State of California to said city of Los Angeles, or its successors, of the reasonable value of all improvements placed upon the tide lands herein described.' "

350 The vote on Preisker's amendment was as follows, the names of the members from the four centers of population directly interested in the Tide Lands bills being printed in black:

Ayes: Messrs. Chandler, **Cunningham**, **Feeley**, Gaylord, Griffin of Modesto, Guill, Hamilton, Harlan, Hayes, Held, Hewitt, Jaspar, Kehoe, **Kennedy**, Malone, March, **McDonald**, Mendenhall, Mott, **Mullally**, Polsley, Preisker, **Ryan**, **Sbragia**, Slater, Stevenot, Stuckenbruck, Telfer, **Walsh**, Wilson, and Wyllie—31.

Noes: Messrs. **Beatty**, Beckett, **Benedict**, Bennink, Bishop, Bohnett, Brown, **Butler**, **Callaghan**, **Cattell**, **Clark**, **Coghlan**, **Cogswell**, Cronin, **Crosby**, **Farwell**, **Fitzgerald**, Griffiths, Hall, **Hinkle**, **Hinshaw**, **Joel**, **Judson**, **Lamb**, **Lyon of Los Angeles**, **Lyon of San Francisco**, Maher, McGowen, **Nolan**, **Randall**, **Rogers of Alameda**, Rutherford, **Schmitt**, **Smith**, Tibbits, Williams, and **Young**—37.

351 The vote by which the Los Angeles Tide Lands bill (Senate Bill 445) was passed was as follows, the names of the members from the four centers of population directly interested being in black:

For the bill: **Beatty**, Beckett, **Benedict**, Bennink, Bishop, Bliss, Bohnett, Brown, **Butler**, **Callaghan**, **Cattell**, **Clark**, **Coghlan**, **Cogswell**, Cronin, **Crosby**, **Farwell**, **Fitzgerald**, Flint, Gaylord, Griffiths, Hall, **Hinkle**, **Hinshaw**, Hewitt, **Joel**, **Judson**, **Kennedy**, **Lamb**, **Lyon of Los Angeles**, **Lyon of San Francisco**, Maher, Malone, McGowen, Mendenhall, Mott, **Nolan**, **Randall**, **Rogers of Alameda**, Rosendale, Rutherford, **Ryan**, **Sbragia**, **Schmitt**, **Smith**, Telfer, Tibbits, **Walsh**, Williams, Wyllie, and **Young**—51.

Against the bill: Chandler, **Cunningham**, **Feeley**, Griffin of Modesto, Guill, Hamilton, Harlan, Hayes, Held, Jasper, March, **McDonald**, **Mullally**, Polsley, Preisker, Slater, Stevenot, Stuckenbruck, and Wilson—19.

mediately after, the Oakland Tide Lands bill was passed by a vote of 48 to 13.[852]

The other Tide Lands measures passed the Assembly, the first part of the "gentlemen's agreement" thereby being fulfilled.

The second part of the agreement will be up for fulfilment when San Francisco decides that the time has come for her to take over the State's valuable properties on the San Francisco waterfront.[853]

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852 The vote by which the Oakland Tide Lands bill (Senate Bill 399) passed the Assembly was as follows:

For the bill: Beatty, Beckett, Benedict, Bennink, Bliss, Bohnett, Brown, Callaghan, Cattell, Clark, Coghlan, Cogswell, Crosby, Cunningham, Farwell, Feeley, Fitzgerald, Flint, Gaylord, Griffiths, Hall, Hinkle, Hinshaw, Hewitt, Joel, Judson, Kennedy, Lamb, Lyon of Los Angeles, Lyon of San Francisco, Malone, McDonald, McGowen, Mendenhall, Mullally, Nolan, Randall, Rogers of Alameda, Rutherford, Ryan, Schmitt, Smith, Telfer, Tibbits, Walsh, Williams, Wyllie, and Young—48.

Against the bill: Griffin of Modesto, Guill, Harlan, Held, Jasper, Kehoe, March, Polsley, Preisker, Slater, Stevenot, Stuckenbruck, and Wilson—13.

This bill did not have the San Francisco opposition that was given the Los Angeles measure.

853 That San Francisco's interest in the State's properties on her water front is largely political is admitted by the more frank. Says the San Francisco Chronicle in its issue of March 17, 1911, in discussing this issue:

"The harbor front, like all our other institutions, is a refuge for politicians and likely to remain so. There are some politicians who are honest and effective, but a great many more who are neither. If it is to be a political refugé—which it ought not to be—we want it to be a refuge for San Francisco politicians."

CHAPTER XXVI.

SECTIONAL DIVISIONS.

Increase of Population in Los Angeles, San Francisco and Alameda Counties Gave Rise to New Issues, and Divided the Legislature on New Lines.

When division occurred between the three chief centers of population, Alameda, Los Angeles and San Francisco, over bills or amendments in which one or more of them were interested, the measures were defeated.

United, San Francisco, Los Angeles and Alameda, even under the 1901-11 apportionment, control the Legislature. This was shown in the passage of the Tide Lands bills in the face of the vigorous opposition from the interior.

But, divided, the three counties were helpless to secure affirmative action on measures in which one or more of them were interested.

This was shown in the defeat of the so-called Greater San Francisco Constitutional amendment, which had for its object the consolidation of some thirty-two communities about San Francisco bay into one municipality. The same thing was shown in the defeat of the so-called "Throop" bill, which had for its purpose the establishment of an Institute of Technology in Southern California.

San Francisco and Alameda divided on the Greater

San Francisco amendment, with Los Angeles a more or less disinterested on-looker. Alameda and Los Angeles divided on the Throop School issue, San Francisco siding against Los Angeles.

The Greater San Francisco Constitutional amendment was not adopted; the Throop bill was defeated.

The Throop bill had its origin in the new conditions due to the increase of population in Southern California. The populous southern district came before the Legislature asking an appropriation of $1,000,000 to establish in one of the southern counties a technical school to be named the California Institute of Technology.[354]

Immediately, the cry was raised that the proposed Institute of Technology for Southern California was to be a second State University. This brought against the plan all the powerful forces of the University of California. The opposition insisted that the State cannot afford two universities. The proponents of the plan, however, insisted that an Institute of Technology is not a University. Nevertheless, the Institute of Technology bill was not forced in either House.

However, on February 7 Senator Gates introduced in the Upper House, and Assemblyman Farwell in the Lower, a measure to take over the Throop Polytechnic

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354 See Assembly bill 902 (Farwell) and its companion measure Senate bill 693 (Gates). The measure provided that the school should be located either in Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, Orange, San Diego, or Imperial County. The course of study provided embraced "instruction in the various branches of agriculture, commercial, industrial, scientific and technical work." Another section provided that "it is hereby expressly declared that the provisions of this act shall be liberally construed to the end that justice may be done and that the work of the school may prosper."

The Gates bill died in the Senate Committee on Education. On the day before adjournment (March 26) the Farwell bill was reported out of the Assembly Committee on Education "Without recommendation." It got no further.

Institute at Pasadena,[355] and to conduct it as a State school to be known as the California Institute of Technology. For the purposes of the school an appropriation of $500,000 was provided. Of this amount, $100,000 was to be used to meet the current expenses of the two fiscal years ending June 30, 1912, and June 30, 1913. The remaining $400,000 was made available during the fiscal years 1912 and 1913 for new construction and care of the grounds and buildings.

Later on, in the Senate, this $500,000 appropriation was reduced to $100,000, provision being made for the current expenses of the Institute for the two years, and nothing provided for new construction.

But this reduction from a $1,000,000 to a $100,000 appropriation did not ease opposition in the least. Indeed, a further argument was furnished, that the funds provided were not sufficient to maintain the class of technical school promised.[356] The opposition contended that a $100,000 school might not injure the State University, but that it would serve as an entering wedge for an institution that in the end would rival disastrously the Berkeley institution. And then the further argument was

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355 The provisions of the bill were conditioned upon the transfer to the State of the entire Throop Polytechnic Institute property, said to be well worth $1,000,000. The Throop management was at the time prepared to make the transfer.

356 In the Pacific Outlook for February 11, 1911, President Scherer of the Throop Institute referred to the proposed California Institute of Technology as one "rivaling the one at Boston (although with broader courses)—a school that should set the pace for American institutions."

Commenting upon Dr. Scherer's statement, a gentleman who has been a close observer of the work of such institutions, wrote, while the Throop bill was pending, as follows:

"Just to give you an idea of what it means to conduct an institution rivaling the Massachusetts Institute of Technology (not to mention one 'with broader courses') I will quote a few figures from the Treasurer's report of that institution for the year ending Sept. 30, 1909, that being the most recent one at hand. In the first place it is to be borne in mind that they charge the students

advanced that the feeling behind the bill was purely sectional, the beginning of a movement for State division.[357]

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one of the largest tuition fees demanded in America, namely, $250 each per year:

" 'Income for the year	$545,974.54
" 'Expense for the year	575,794.35
" 'Deficiency of income	$29,819.51
" 'Their income from students was	$341,195.54
" 'Net income from endowments	79,958.47*
" 'Grant from State of Massachusetts	29,000.00
" 'Grant from U. S.	18,643.01
" 'Gift from Alumni Fund for current expenses	41,147.94

" 'Miscellaneous items make up the balance of the income.'

"Here, then, is the institution which the State is to rival. On the basis of its deserved reputation—and it has some of the strongest men in the land on its faculty—it has been able to attract 1500 students willing and able to pay an annual tuition of $250.00 each. What would take the place of this item of income for the California Institute of Technology? It must be remembered that if 'broad courses' are to be offered of equal grade with the Massachusetts Institute, a complete faculty of equal grade must be provided whether the students be many or few. And the one item of teachers' salaries alone at 'Technology' is $336,100.94.

"The Massachusetts Institute has the income from endowment funds of over $2,000,000. What would take the place of this?

"The Institute of Technology has a large and prosperous alumni body contributing over $40,000 per year to keep things going. What would take the place of this? The Institute of Technology gets nearly $50,000 a year from State and Nation. What would this item have to be from the State of California, no national aid being forthcoming, and to provide for the deficiencies on the other items enumerated? Would it not, in round numbers, have to be $500,000.00 a year?

"Of course if someone stands ready to endow the institution with not less than $10,000,000.00 it is a different matter. Or if the institution contents itself with more moderate ambitions.

"The Carnegie Technical Schools at Pittsburgh would scarcely claim to rival the Institute of Technology. In 1900 the citizens of that city were considering spending $100,000.00 for a technical high school. Mr. Carnegie, learning this, offered to provide the necessary funds. He started with $1,000,000.00. I take this sentence from their last catalogue: 'Mr. Carnegie, . . . has not only provided funds for new buildings, but has increased his original gift of one million dollars to seven millions.' Note that seven millions. It gives an idea of what this sort of thing costs. And the Carnegie School is modest in its claims. Its low entrance requirements alone place it in a different class from those doing the grade of work of the Massachusetts Institute. This is no disparagement of the Carnegie Schools, they are doing a work of utmost value, even if they are not 'setting the pace for American institutions.' "

[357] "There is no one thing in the State," said Warren Olney, Jr., who opposed the Throop bill, "which has so united it, as the host of graduates who have gone out from the University to all portions of the State. For this reason alone I believe the measure (the Throop bill) should be opposed."

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* Principal being $2,185,822.37.

The contest over the Throop bill came in the Senate. The University of California being in Alameda county, the leadership of the opposition was finally assumed by Alameda Senators. The University alumni had a strong lobby at Sacramento to fight the measure. The San Francisco press joined in the opposition. It was charged that large financial institutions had thrown their powerful influence against the bill.

In their efforts to meet this storm of opposition, the proponents of the bill amended it to provide "that the work of said institution shall be confined to instruction in engineering."

But this olive branch was swept aside with statements from the opposition that the State University now has full and complete engineering departments with an investment in them of about $2,000,000. So far as opportunities for instruction in engineering are concerned, it was contended, the State University now supplies these opportunities.

The Southern delegation contended, on the other hand, that it is a far trip from Southern California to Berkeley, that the southern people, in common justice, should have the privilege of educating their children near home. Senator Caminetti, not from the South, but from northern Amador, insisted that if he had his way, such an institute as was proposed should be established in every important community in the State. But the opposition with Alameda as its backbone, and San Francisco against Los Angeles, rather increased its efforts after Caminetti's frank announcement.

When the measure came up for final passage, it was

defeated by a vote of 14 to 21.[858] Not a San Francisco or Alameda county member voted for it; not a Los Angeles county member voted against it.

Senator Wright, on a motion to reconsider, kept the issue alive for several days longer, but at the request of President Scherer of Throop School, Senator Gates finally withdrew the bill.[859]

An equally bitter contest was brought on by the so-called Greater San Francisco amendment, but the division was on other lines. Here the principals were San Francisco and Alameda, with Los Angeles quite disinterested. Indeed, Los Angeles had introduced a greater-city amendment of her own.[860] It would have been easy for Los

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858 The Senate vote by which the Throop bill was defeated was as follows:

For the bill—Avey, **Bell, Bills**, Black, Caminetti, Campbell, Curtin, Estudillo, **Gates, Hewitt, Hurd**, Roseberry, **Thompson**, and Walker—14.

Against the bill—Birdsall, Boynton, **Bryant, Burnett, Cassidy**, Cutten, **Finn, Hans, Hare**, Holohan, Juilliard, **Lewis, Martinelli, Regan**, Sanford, Shanahan, **Stetson, Strobridge, Tyrrell, Welch**, and Wright—21.

The names of the members from Los Angeles (all for the bill), San Francisco and Alameda (all against the bill), are printed in black.

859 Dr. Scherer's telegram to Senator Gates, advising that the bill be withdrawn, was as follows:

"Please withdraw Throop proposition absolutely. The Senate has spoken once, and we are unwilling to seek to force our gift upon the State or to invite a prolongation of the kind of warfare that defeated the bill last Friday. Feel at liberty to read this before the Senate and to publish."

860 Senate Constitutional Amendment No. 28. This amendment added a new section to Art. XI and provided that "Cities governed under charters framed under the authority given by section eight of this article may, under general laws, be consolidated with other cities into one municipal corporation, whether such other cities are governed under charter so framed, or are incorporated under general or special laws, and such consolidated municipal corporations shall be governed as a city with the name of the one of such cities having the greatest population, determined as provided by general laws, and under the charter or laws governing such city having the greatest population. The provisions of this Constitution applicable to cities shall apply to such consolidated municipal corporation."

Angeles and San Francisco to have united on this issue, had it not been for the fight over the Throop bill. In siding with Alameda in that controversy, San Francisco lost the opportunity to get Los Angeles support for the Greater San Francisco amendment, nor did San Francisco gain Alameda as an ally. In a previous chapter it was shown how in the reapportionment fight, Alameda finally went over to Los Angeles. All that San Francisco got for her opposition to the Throop bill, was the satisfaction given some of the San Francisco delegation that Los Angeles had been denied something which that city appeared to want badly. San Francisco went into her contest with Alameda over the Greater San Francisco amendment with Los Angeles apparently indifferent to the outcome.

The amendment was introduced by Senator Wolfe. Its immediate purpose was to provide means for consolidation of the cities about San Francisco bay, including those on the Alameda county shore. It was asserted, and so far as I know not denied, that thirty-two communities, large and small, were affected.

The opposition to the measure came principally from the cities of Alameda county, the City of Alameda, population 23,383, being the only community of the county to favor the proposed scheme for annexation.

Oakland opposed the amendment vigorously, Senator Stetson leading the fight against it. San Francisco labored under the great disadvantage of poor representation on the floor of the Senate.[361] The day when bombast,

361 The San Francisco Chronicle dubbed the San Francisco members "pygmies." On the night of the hearing on the Greater San Francisco amendment before the joint Senate and Assembly committees, the writer was talking to a prominent San Francisco

vilification and personal abuse can be substituted for argument on the floor of the California Senate has passed. With nine San Francisco members on the floor of the Senate, when the Greater San Francisco amendment came up for adoption, only nineteen members, two of them from Los Angeles (Hewitt and Hurd) voted for it.[362]

Four days later, the amendment was again brought before the Senate on a motion to reconsider. But again was it refused adoption,[363] failing to secure the necessary twenty-seven votes. San Francisco, with a representation of almost twenty-five per cent. of the Senate, found herself defeated in her principal fight of the session.

The completeness of the defeat was well recognized.

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businessman while waiting for the meeting to be called to order. As the San Francisco delegation came in the businessman eyed the members closely. Soon after, two Los Angeles Assemblymen, clean-cut, well dressed, confident of their position, came in.

"Who are those men?" the San Franciscan asked.

I told him.

"Why," he demanded, "cannot San Francisco send such men to the Legislature?"

"We cannot," said the San Francisco Chronicle bitterly, in an editorial article, "rely on our (San Francisco) representatives in the Legislature to secure us fair treatment, for we send pygmies to Sacramento to deal with the able and united phalanx which the South sends up."

The Chronicle might have added that as able a phalanx comes from Alameda County as from the South.

362 The vote on the Greater San Francisco amendment was as follows:

For the amendment—Beban, Bills, Birdsall, Black, Boynton, Bryant, Burnett, Cassidy, Estudillo, Finn, Hare, Hewitt, Holohan, Hurd, Regan, Shanahan, Walker, Welch, and Wright—19.

Against the amendment—Avey, Bell, Caminetti, Campbell, Cartwright, Curtin, Cutten, Gates, Hans, Juilliard, Larkins, Lewis, Martinelli, Roseberry, Rush, Sanford, Stetson, Strobridge, Thompson, Tyrrell, and Wolfe—21.

363 The second vote on the Greater San Francisco amendment was as follows:

For the amendment—Beban, Bills, Birdsall, Black, Boynton, Bryant, Burnett, Caminetti, Cassidy, Estudillo, Finn, Hare, Hewitt, Holohan, Hurd, Martinelli, Regan, Shanahan, Walker, Welch, Wolfe, and Wright—22.

Against the amendment—Avey, Bell, Campbell, Cartwright, Curtin, Cutten, Gates, Hans, Larkins, Roseberry, Sanford, Stetson, Strobridge, Thompson, and Tyrrell—15.

"This means," said a legislative representative of the San Francisco Call in a dispatch sent from Sacramento, March 18, "that the people about the lower end of San Francisco bay will not be enabled to vote upon consolidation unless the Hewitt amendment designed for the needs of Los Angeles be adopted, and the inhabitants within the San Francisco metropolitan area avail themselves of it."

This Hewitt Greater City amendment was later on adopted in the Senate without a dissenting vote, but it was noted that only one Alameda county member (Strobridge) voted for it.[864]

The Hewitt amendment was not adopted in the Assembly, however, and was not submitted to The People for ratification.

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864 The Hewitt Greater City amendment (S. C. A. 28) was adopted in the Senate by the following vote:

For the amendment—Avey, **Bell**, Bills, **Black**, Boynton, **Bryant**, **Burnett**, Campbell, Cartwright, **Cassidy**, **Finn**, **Gates**, **Hare**, **Hewitt**, Holohan, **Hurd**, Juilliard, Lewis, Martinelli, **Regan**, Roseberry, Rush, **Strobridge**, **Thompson**, Walker, **Welch**, **Wolfe**, and Wright —28.

Against the amendment—None.

The names of the Senators from San Francisco, Los Angeles and Alameda counties are printed in black.

CHAPTER XXVII.

CONCERNING MANY MEASURES.

Board of Control—Home Rule for Counties Amendment —Amendment of Banking Act—Equal Suffrage— Prison Reform Measures—Commonwealth Club Bills —Short Ballot Measures—Japanese Bills.

Few of the Progressive measures considered in previous chapters received favorable consideration except in the teeth of opposition from influences outside the Legislature. Thus, many holding judicial office exerted themselves, more or less directly, to prevent provision for recall of the judiciary being included in the Recall amendment. In this, as has been seen, they were unsuccessful.

The so-called Superintendent of Banks act (Assembly bill 684) was another measure which became a law in spite of powerful opposition. The measure amended the 1909 Bank act.

AMENDMENT OF BANKING LAW.

Originally, the law made the term of the State Superintendent of Banks four years, unless the Superintendent were removed for cause. The 1911 amendment made the tenure of office at the pleasure of the Governor.

The change in the law was brought about because of a series of perhaps the least creditable acts of Governor Gillett's administration.

Alden Anderson, State Superintendent of Banks un-

der Gillett, had resigned his office, July 1, 1910. Anderson was then candidate for the Republican nomination for Governor. There was some talk at the time that Anderson's resignation "had a string to it," but this was hotly denied. Nevertheless, Anderson's resignation was not accepted, and he continued Bank Superintendent.

A month before Gillett's term as Governor expired, he re-appointed Anderson Bank Commissioner to serve for "the term prescribed by law." The term is for four years.

Even more reprehensible was Gillett's appointments of Commissioner of the Bureau of Labor, and of Building and Loan Commissioners.

The term of the Commissioner of the Bureau of Labor would have expired on July 1, 1911. On January 2, 1911, the Commissioner resigned. This was the day before Gillett's term of office expired. Gillett promptly appointed the Commissioner's successor to serve four years.

The terms of the Building and Loan Commissioners would have expired on January 7, 1911. On January 2, five days before their terms would have expired, the commissioners resigned their offices, and Governor Gillett appointed their successors to four-year terms.

Governor Johnson, in a special message to the Legislature, recommended legislation which should make such sharp practice impossible in the future.[365] This would

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365 Referring to Governor Gillett's forced appointments, Governor Johnson in his message to the Legislature said:

"By this simple short cut, these four important offices were appropriated in the last hours of my predecessor.

"This sort of practice I believe to be detrimental to the public service, and beyond that, I believe it is beneath the dignity of the

make Johnson the first Governor who would be barred by the law from doing what Gillett had done. The most important of the measures which became laws as protest against Gillett's act was Assembly bill 684, which deals with the office of Superintendent of Banks.

Against the passage of this measure was arrayed a considerable portion of the banking interests of the State, that element popularly known as "Big Business," and the machine politicians who at the 1910 election had been ousted from control of State affairs.

Every "pull" which this allied group could command to defeat the measure was employed. Bankers appealed to members of the Legislature to vote against the bill. The controlled press cried out at the alleged wrong of it; the scattered members of what had been the Southern Pacific political organization, exerted themselves to secure its defeat. The issue was clearly drawn between the progressive administration on the one side, and on the other, those bad influences which Governor Johnson had pledged himself to "kick out of politics," out of the government of the State.

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office of Governor to permit that office to be used for such purposes in the closing hours of the term of any incumbent.

"I ask you, therefore, for such an Act as will prevent, in the future, any such appropriation of the public service, and as will render it impossible for any Governor hereafter, by the simple expedient of having his appointees resign, to continue those appointees in office during the term of his successor.

"I am told that in former administrations, appointments have been made in the last hours of the incumbent Governor, but in every instance these appointments were made where vacancies existed or terms had expried. The method recently adopted, of resignations, and thus lengthening terms, has just been employed for the first time.

"It is my wish that such Act as you provide shall be operative upon the present incumbent of the office of Governor, and inasmuch as the inhibition will first be operative upon the present Governor, it ought to be apparent that our design is one solely for the benefit of the public service."

And in the end, although at times defeat was perilously near, the new order prevailed. Assembly bill 684 became a law with only two members of the 120 in the Legislature voting against it. The two adverse votes were cast by Senators Wolfe and Wright.[366]

The laws governing the Building and Loan Commission, and the Bureau of Labor Statistics were amended practically without opposition to prevent recurrence in future of the course taken by Governor Gillett to force appointments in these offices. The feature of the amendment of those laws was the unavailing effort of those who had secured the last-day appointments from Governor Gillett, to prevent the amendments being made.

CHARTER GOVERNMENT FOR COUNTIES.

The 1911 Legislature submitted a constitutional amendment to The People, which gives counties the option of continuing to be governed by general State laws, or to adopt a charter form of government, not unlike that enjoyed by municipalities. A similar amendment had been introduced at the 1909 session by Assemblyman A. M. Drew of Fresno.[366a]

The machine element in the Assembly lined up against the 1909 amendment; the Progressives generally supported it.

When the measure came to vote it was refused adoption by a vote of 34 for it to 27 against it, 54 votes being necessary for its submission to the electors.

366 For the vote on Assembly bill 684, see tables I and II, Senate and Assembly Test votes, in the appendix.

366a Similar constitutional amendments had been introduced as early as 1899, but none of them were given serious consideration.

On a motion to reconsider, a second vote was taken later in the session, 36 members voting for it, and 30 against it.

In this way the submission of the County Charter amendment went into the long list of unfinished business of the 1909 session, to be taken up in 1911.

The amendment introduced at the 1911 session provides that by resolution of three-fifths of the Board of Supervisors, or on initiative petition of 15 per cent. of the electors of a county, computed on the vote for all the candidates for Governor at the last preceding general election, an election shall be called to name fifteen freeholders to prepare a charter for the county's governmental organization.

On the ratification by a majority of the electors of the county, of the charter thus drawn, it goes to the Legislature exactly like municipal charters for approval or rejection. The Legislature must approve or reject, it cannot, under the terms of Senate Amendment No. 5, alter or amend.

Counties are left free to avail themselves of the opportunity for charter government offered, or to continue under the system of general laws. But a county adopting a county charter becomes in a measure as free as a chartered municipality.

As in the case of most of the reforms that were defeated at the 1909 session, the County Charter amendment had a clear course at the session of 1911.

The measure was adopted in the Senate by a vote of 29 to 2, Senators Wolfe and Regan being the only mem-

bers to vote against it. Both these gentlemen are from San Francisco.

In the Assembly, the amendment was adopted by a vote of 59 to 5. The five members voting against it, were Cunningham, Feeley, Kennedy, March and Walsh.

Four of these gentlemen, Cunningham, Feeley, Kennedy and Walsh, are from San Francisco. Assemblyman March is from Sacramento.

Thus, of the seven men who voted against the amendment, six were from San Francisco, although the amendment does not apply to the City and County of San Francisco at all, merely giving to outside counties the same privileges of self-government which San Francisco already enjoys.

Another measure which met with powerful, but unavailing opposition, was the Equal Suffrage amendment.[367]

EQUAL SUFFRAGE AMENDMENT.

The old-time machine had treated equal suffrage as a moral as well as a political issue, opposing it on both counts.

At the 1909 session, the Equal Suffrage constitutional amendment did not come to a vote in the Senate, but in the 1909 Assembly, 40 voted for the amendment; 36 voted against it; 54 votes being required to submit the amendment for ratification by The People. At the same session, the Assembly by a vote of 38 to 36 decided against giving the people a practical, State-wide, nominating vote for United States Senator. Of the thirty-eight Assemblymen who voted against giving men

[367] The Senate and Assembly votes on the Suffrage amendment will be found in Tables I and II, in the appendix.

voters a part in naming their United States Senators, twenty-five voted against giving any vote to women at all.[368]

At the 1911 session, five Senators voted against the amendment. They were Hans, Martinelli, Sanford, Wolfe and Wright. These five gentlemen had sat in the 1909 Legislature. Four of them, Martinelli, Hans, Wolfe and Wright, voted that session against the plan to give the male voters a practical State-wide nominating vote for United States Senator.

Thus, generally speaking, under the machine order, those members of the Legislature who opposed progressive political measures which extended the powers of the male voter, were found in opposition to equal suffrage.

On the moral side, those members of Legislatures under the rule of the machine who opposed the passage of measures to prevent the prostitution of horse-racing in the interest of gamblers, to provide for Local Option elections and the like, were as a general thing opposed to equal suffrage. On the other hand, members who favored equal suffrage were usually found voting for the so-called moral measures, which the machine element opposed.

This was well illustrated at the 1909 session. The machine leaders in the Assembly that year, objected to the consideration of the Local Option bill in the Assembly before the Senate went on record on it, on the ground that the Assembly had already acted first on two "moral issues," namely, equal suffrage and racetrack gambling,

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368 The twenty-five were Beatty, Beban, Collier, Cullen, Feeley, Greer, Hammon, Hanlon, Hans, Hawk, Johnston of Contra Costa, Leeds, Lightner, Macaulay, McClellan, McManus, Mott, Nelson, Pugh, Rech, Rutherford, Schmitt, Stanton, Transue, Wagner.

and that it was unfair to compel the Lower House to lead off in every "moral issue" before the Legislature.

In "fairness" to the Assembly, therefore, the Local Option bill was sidetracked in that body. Under this interesting arrangement the 1909 Senate Local Option bill never reached the Assembly, nor the Equal Suffrage amendment the Senate.

The old machine element classified equal suffrage along with anti-racetrack gambling and local option legislation, and very frankly set up the same character of opposition to all three.

At the 1910 election, the machine lost control of the machinery of the Republican party. The Progressives in control of the Republican State convention declared for equal suffrage. The Republican members of the Legislature of 1911, in carrying out the pledges of their party in conjunction with Progressive Democrats, submitted an Equal Suffrage amendment to the electors. The amendment met with comparatively little effective opposition in either House. In the Assembly sixty-six voted for the amendment, and twelve against it. In the Senate thirty-three voted for it, while five voted in the negative.

PRISON REFORM.

The much-neglected State prisons were given more intelligent treatment by the 1911 Legislature than by any Legislature that has sat in California in the memory of the present generation. But the crying shame of the conditions at the prisons was by no means wiped out. There is plenty yet remaining to be done. What California prisons require above all things is that purification which will follow complete publicity of the methods of their management.

As in the case of the courts, prison-management has been left alone so long that it has become stagnant. And stagnation leads to corruption. There is direct evidence that stories of unwarranted cruelties practiced in California prisons are well founded, and there is some reason to believe that the stories of the meanest of graft, which get beyond the stone walls, have more foundation in fact than the reputable citizen who realizes his responsibility, likes to believe. All of which will continue to come before future Legislatures until the California prison problem has been solved, and solved right.

The most important prison measure acted upon by the 1911 Legislature, authorized the manufacture at the State prisons of articles, materials and supplies for the use of the State.[869]

Under the law prohibiting profitable employment of convicts, the State had been maintaining the State prisons at an expense of $500,000 a year, all of which, in the final count, is paid by free-men producers. In addition to this, the State, and political sub-divisions thereof, have been expending large sums annually for supplies which could very well be manufactured at the prisons. Some of these supplies, it has been alleged, are actually manufactured in Eastern prisons. Whether this is the fact or not, the theory that the State must, for the protection of free labor, pay extravagant prices for supplies which convicts supported practically in idleness could manufacture, is not particularly sound. This is emphasized by the fact

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869 Assembly bill 888 introduced in the Lower House by Gerdes. A companion bill, Senate bill 697, was introduced in the Upper House by Finn. Governor Johnson's message on this measure will be found in the appendix.

that under graft administrations the convicts have been employed to manufacture costly furniture which has been distributed free among the beneficiaries of the administrations, who have had no compunction at grafting off the labor of voiceless convicts.

That free labor might be protected against convict competition, the measure provided that "all articles, materials, and supplies, produced or manufactured under the provisions of this act shall be solely and exclusively for public use and no article, material, or supplies, produced or manufactured under the provisions of this act shall ever be sold, supplied, furnished, exchanged, or given away, for any private use or profit whatever."

Not a vote was cast against this bill in either Senate or Assembly, although Senator Wolfe, when it came up in the Senate, asked to be excused from voting on it. Senator Wolfe's request was granted.[370]

The employment of convicts in State work, it is claimed, not only betters the condition of the convicts, but will save the State hundreds of thousands of dollars

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370 The vote on Assembly bill 888 was as follows:

In the Assembly:

For the bill—Beatty, Benedict, Bennink, Bliss, Brown, Butler, Callaghan, Cattell, Chandler, Cronin, Crosby, Farwell, Feeley, Flint, Freeman, Gaylord, Gerdes, Griffin of Modesto, Guill, Hall, Hamilton, Harlan, Held, Hinkle, Hinshaw, Jasper, Jones, Joel, Judson, Kehoe, Lamb, Lynch, Lyon of Los Angeles, Maher, March, McGowen, Mendenhall, Mott, Mullally, Nolan, Polsley, Preisker, Randall, Rimlinger, Rodgers of San Francisco, Ryan, Sbragia, Slater, Smith, Stevenot, Stuckenbruck, Telfer, Tibbits, Walsh, Wilson and Young—56.

Against the bill—None.

In the Senate:

For the bill—Avey, Beban, Bell, Birdsall, Black, Boynton, Bryant, Caminetti, Cartwright, Cassidy, Gates, Hans, Hewitt, Hurd, Larkins, Martinelli, Regan, Rush, Shanahan, Stetson, Strobridge, Thompson, Walker, and Welch—24.

Against the bill—None.

annually, and will eventually make the prisons self-supporting.

The original "Board of Control" bill,[871] introduced in the Assembly by Benedict, and which passed that body by narrow margin, was a very different measure than that which eventually passed the Legislature. There were undoubtedly weak points in the original measure—power of removal of members of the board by the appointing power being too indefinite, for example—but these could have been strengthened by amendments. The principal opposition was not because of admitted weak points in the bill, but because of the strong points. Persons enjoying profitable trade with State institutions apparently did not want too close scrutiny of that trade. The bill as it was finally passed was not deemed so strong in this particular as it was when it had originally passed the Assembly. But the measure that did pass has certainly justified itself. The discoveries made by the Board of Control in the State Printing office alone are sufficient to demonstrate the advantage of the enactment of this law.

BOARD OF CONTROL.

Outside influences, coming principally from the offices

871 The vote by which the original Benedict Board of Control bill (A. B. 515) passed the Assembly was as follows:

For the bill—Beatty, Beckett, Benedict, Bliss, Bohnett, Brown, Butler, Cattell, Chandler, Clark, Cogswell, Farwell, Flint, Freeman, Gaylord, Gerdes, Griffin of Modesto, Guill, Hamilton, Hinkle, Hinshaw, Jasper, Joel, Judson, Kehoe, Lamb, Lyon of Los Angeles, Malone, McDonald, Mendenhall, Mott, Polsley, Preisker, Randall, Rogers of Alameda, Rosendale, Smith, Stevenot, Stuckenbruck, Sutherland, Telfer, Tibbits, Wilson, Wyllie, and Young—45.

Against the bill—Bishop, Callaghan, Coghlan, Cronin, Crosby, Cunningham, Fitzgerald, Griffiths, Hall, Harlan, Held, Hewitt, Jones, Lynch, Lyon of San Francisco, Maher, March, Mullally, Nolan, Rodgers of San Francisco, Ryan, Sbragia, Schmitt, Slater, and Williams—25.

immediately affected, were largely responsible for the defeat of part of the so-called Short Ballot measures.[872]

THE SHORT BALLOT MEASURES.

Of these measures Assembly bill 1106, making the office of State Printer appointive instead of elective, became a law. Assembly Constitutional Amendment 33, making the office of Clerk of the Supreme Court appointive, was submitted to the electors for ratification.

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872 Governor Johnson in an interview, which appeared in the Sacramento Bee of March 13, stated his attitude on the Short Ballot measures as follows:

"The short ballot is no pet scheme of the Governor's and there is no design to give to the present Executive any increased power. The short ballot is something to which all parties in the State of California stand pledged, and the idea is the crystallization of the wisest experience and best thought of the nation.

"The Short Ballot League, with headquarters in New York, is officered by such men as Woodrow Wilson and Winston Churchill, and embraces among its membership the ablest political economists in both parties in the United States.

"The bill pending before the Legislature was drawn so that the present Governor has nothing to do with the appointment of the officers that may be appointed, and it is assured that no present officer shall be disturbed during the term for which he was elected.

"The newspapers of the Interests and certain mouthpieces of theirs have asserted that the design of the measure was to increase the power of the present Executive, and to take from The People power that The People now have. Both of these statements are, to say the least, not accurate.

"It ought to be obvious to anybody who really thinks about the situation that the minor officers on a State ticket are not now really chosen by The People—because, in the very nature of things, The People can not know the candidates or their qualities for these minor offices. The demonstration of this will be found if any elector will ask himself who were the opposing candidates for any of the minor State officers in the last election, and what he knew concerning them.

"With the attention of the electorate focused on one or more of the conspicuous offices, the power with respect to these minor officers is much more certainly in the hands of the people, than if they elect candidates to the minor offices of whom they know nothing.

"The literature of the Short Ballot League is open to any man who wishes to inform himself, and is simple and convincing in character. Personally, it makes no difference to the Chief Executive of the State whether this reform shall be immediately adopted or not. As we progress and as we continue to think on these subjects, it is certain to come, notwithstanding the reactionary press of California."

The other Short Ballot measures, although adopted in the Assembly, failed of adoption in the Senate.

The first of these, Assembly Constitutional Amendment No. 34, made the office of State Superintendent of Public Instruction appointive.[373] The second, Assembly Amendment 35, added the offices of Secretary of State, Treasurer, Surveyor-General and Attorney-General to those to be appointed by the Governor.[374] The amendments, however, in no way affected those holding office, provision being expressly made for them to continue in office until expiration of the terms for which they had been elected.

These measures were adopted in the Assembly without much opposition but were blocked in the Senate.

Assembly Constitutional Amendment 34, making the

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373 The vote by which Assembly Constitutional Amendment No. 34 was adopted in the Assembly was as follows:

For the amendment—Beatty, Beckett, Benedict, Bliss, Bohnet, Butler, Callaghan, Cattell, Chandler, Clark, Cogswell, Crosby, Farwell, Fitzgerald, Flint, Gaylord, Gerdes, Griffin of Modesto, Guill, Hamilton, Harlan, Held, Hewitt, Hinkle, Hinshaw, Jones, Joel, Judson, Kehoe, Kennedy, Lamb, Lyon of Los Angeles, Malone, March, McDonald, McGowen, Mendenhall, Mott, Nolan, Preisker, Randall, Rodgers of San Francisco, Rogers of Alameda, Rosendale, Rutherford, Slater, Smith, Stevenot, Stuckenbruck, Sutherland, Telfer, Walker, Walsh, Williams, Wilson, Wyllie, and Young—57.

Against the amendment—Bennink, Bishop, Brown, Cronin, Cunningham, Denegri, Feeley, Freeman, Hall, Jasper, Lynch, Lyon of San Francisco, Maher, Mullally, Polsley, Rimlinger, Sbragia, and Schmitt—18.

374 The vote by which Assembly Constitutional Amendment No, 35 was adopted in the Lower House was as follows:

For the amendment—Beatty, Beckett, Benedict, Bohnett, Butler, Callaghan, Cattell, Chandler, Clark, Coghlan, Cogswell, Crosby, Denegri, Farwell, Feeley, Fitzgerald, Flint, Gaylord, Gerdes, Guill, Hamilton, Harlan, Held, Hewitt, Hinkle, Hinshaw, Joel, Judson, Kehoe, Kennedy, Lamb, Lyon of San Francisco, Malone, McDonald, McGowen, Mott, Preisker, Randall, Rodgers of San Francisco, Rogers of Alameda, Rosendale, Ryan, Sbragia, Slater, Smith, Stevenot, Stuckenbruck, Sutherland, Telfer, Tibbits, Walker, Walsh, Williams, Wilson, Wyllie, and Young—56.

Against the amendment—Bennink, Bishop, Brown, Cronin, Freeman, Hall, Hayes, Jasper, Jones, Lynch, Maher, March, Mendenhall, Polsley, and Schmitt—15.

office of Superintendent of Public Instruction appointive, went to the Senate Committee on Education. The committee reported it out with the recommendation that it be adopted. But so persistent was the opposition to this amendment that it was not brought to vote in the upper house.[375]

The same disposition was made of the proposed amendment to make the offices of Secretary of State, Treasurer, Surveyor-General and Attorney-General appointive, although in a somewhat different way. Senator Strobridge had introduced this amendment in the Upper House, and before the Assembly had adopted the companion measure, the Senate Judiciary Committee had acted upon the amendment introduced by Strobridge and acted upon it adversely.

The Senate Judiciary Committee had amended the Strobridge measure by eliminating the office of Attorney-General from its provisions, leaving that office elective. With this amendment, by an 8 to 10 vote[376] the Judiciary Committee sent the measure back to the Senate with the recommendation that it be not adopted.

Within a week after the Judiciary Committee's adverse action, the companion amendment was adopted in

375 The chief objection to making the office of State Superintendent of Public Instruction appointive, had its basis in the growing jealousy of the encroachment of the State University on the Public School system. Objection was raised to the amendment that an appointed State Superintendent of Public Instruction would be likely to be dominated entirely by the University, and thus be out of sympathy and touch with the common school system.

376 The vote of the Senate Judiciary Committee on the Strobridge Short Ballot amendment was as follows:

For the amendment—Burnett, Campbell, Cartwright, Gates, Hewitt, Roseberry, Thompson, Tyrrell—8.

Against the amendment—Caminetti, Curtin, Estudillo, Juilliard, Larkins, Martinelli, Shanahan, Wolfe, Wright, Stetson—10.

the Assembly. But this did not strengthen the Senate supporters of the reform so much as had been expected. To be sure, Senator Stetson, who had voted against the Strobridge measure in Committee, announced that he would support it on the floor of the Senate. But other Progressives were open in their opposition. Senator Larkins, for example, held that so long as the Secretary of State remained a member of the State Board of Examiners it would be unwise to make the office appointive, lest the Secretary of State, in his capacity as a member of the Board of Examiners be dominated by the Governor.

Repeated canvass of the Senate did not show more than twenty-five members as favoring the amendment. As a vote of twenty-seven was required to submit it to The People for ratification, the measure was not brought to vote.

This reform passed into the list of unfinished business to be taken up at future sessions.

STATE CAPITOL SUPERINTENDENT.

Up to the 1911 session the State capitol and grounds had been in charge of a Board of Capitol Commissioners, consisting of the Governor, State Treasurer and Secretary of State. The custom usually followed was for the three officials to "divide the patronage," and then let nature and politics take their course.

The usual course was for the three groups of appointees to develop infinite scorn of one another to the end that care of the State property was neglected. To bring these conditions to an end, a measure was intro-

duced, creating the office of Superintendent of the State Capitol building and grounds.[377]

This measure was strongly opposed by Secretary of State Jordan, but eventually passed both Houses, and was approved by the Governor.

The so-called Commonwealth Club bills, for the reform of the criminal procedure, which were considered at the 1911 session, were not so far reaching as the measures prepared by that organization for consideration at the session of 1909, none of which were enacted.[378]

REFORM OF CRIMINAL PROCEDURE.

The 1911 measures in the main became laws. The most important among them dealt with Grand Juries and Grand Jurors.

Under the measures which became laws it will be impossible hereafter to put Grand Jurors on trial as was done in the San Francisco graft cases. Hereafter, too,

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377 Assembly bill 1183, introduced by Wyllie. The bill was passed by the following vote:

In the Assembly:

For the bill—Beatty, Beckett, Benedict, Bliss, Bohnett, Brown, Butler, Callaghan, Cattell, Chandler, Clark, Cogswell, Crosby, Denegri, Farwell, Feeley, Flint, Gerdes, Griffin of Modesto, Guill, Harlan, Hayes, Held, Hinkle, Hinshaw, Jasper, Joel, Judson, Kehoe, Kennedy, Lamb, Lynch, Lyon of Los Angeles, Lyon of San Francisco, Maher, Malone, McDonald, Mendenhall, Mott, Nolan, Polsley, Preisker, Randall, Rodgers of San Francisco, Rosendale, Rutherford, Ryan, Sbragia, Slater, Smith, Stevenot, Stuckenbruck, Sutherland, Telfer, Tibbits, Wilson, Wyllie, Young, and Mr. Speaker—59.

Against the bill—Bennink, Bishop, Coghlan, Cronin, Freeman, Gaylord, Griffiths, Hamilton, Mullally, and Schmitt—10.

In the Senate:

For the bill—Avey, Beban, Bell, Bills, Birdsall, Black, Boynton, Bryant, Burnett, Caminetti, Campbell, Curtin, Cutten, Estudillo, Gates, Hewitt, Holohan, Hurd, Juilliard, Lewis, Regan, Roseberry, Rush, Shanahan, Stetson, Strobridge, Thompson, Tyrrell, Walker, and Welch—30.

Against the bill—Cassidy, Martinelli, Sanford, Wolfe, and Wright—5.

378 See "Story of the California Legislature of 1909," Chapter XV.

an indictment or information may be amended by the district attorney without leave of the court at any time before the defendant pleads; and at any time thereafter in the discretion of the court where it can be done without prejudice to the substantial rights of the defendant.

Another measure takes from a witness his privilege of refusing to give testimony on the grounds that it may incriminate him. The witness is safe-guarded, however, by a provision that he shall not be liable thereafter to prosecution nor punishment with respect to the offense of which such testimony is given.

Unfortunately, measures for simplification of prosecutions in criminal cases were hampered by opposition of Organized Labor, whose leaders feared that the proposed changes would be made subject of abuse in cases growing out of disputes between labor and capital.

Thus Senate Constitutional Amendment No. 13, which provided that nine—or, as finally amended, ten—jurors, may render a verdict in criminal cases, except where the penalty is death or life imprisonment, was refused adoption,[879] largely on account of the opposition of labor representatives.[880]

Provision was made, in Senate Amendment 26, for

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879 The vote on Senate amendment 13 was as follows:

In the Senate:

For the amendment—Avey, Bell, Bills, Birdsall, Black, Boynton, Burnett, Caminetti, Campbell, Cartwright, Curtin, Cutten, Estudillo, Gates, Hewitt, Holohan, Larkins, Lewis, Martinelli, Regan, Roseberry, Rush, Sanford, Shanahan, Stetson, Strobridge, Thompson, Walker, and Welch—29.

Against the amendment—Beban, Bryant, Cassidy, Finn, Hurd, Juilliard, Tyrrell, Wolfe, and Wright—9.

In the Assembly:

For the amendment—Beatty, Beckett, Bennink, Bliss, Bohnett, Butler, Cattell, Chandler, Clark, Cogswell, Farwell, Flint, Gaylord, Gerdes, Griffin of Modesto, Griffiths, Guill, Hamilton, Harlan, Held, Hewitt, Hinkle, Hinshaw, Joel, Judson, Kehoe, Lamb, Lyon of Los Angeles, Malone, Mendenhall, Mott, Polsley, Preisker, Randall,

an ending of the release of convicted criminals because of trivial technicalities. This amendment provides that "no judgment shall be set aside, or new trial granted in any criminal case on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, after an examination of the entire cause including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."

This amendment was adopted by both Houses, and submitted to The People for ratification.[381]

Rogers of Alameda, Rutherford, Slater, Stevenot, Sutherland, Tibbits, Williams, Wilson, Wyllie, and Young—44.

Against the amendment—Bishop, Brown, Callaghan, Coghlan, Cronin, Cunningham, Denegri, Feeley, Fitzgerald, Freeman, Hall, Hayes, Jasper, Jones, Kennedy, Lynch, Lyon of San Francisco, Maher, March, McDonald, Mullally, Nolan, Rimlinger, Rodgers of San Francisco, Rosendale, Ryan, Sbragia, Schmitt, Smith, Stuckenbruck, Telfer, and Walker—32.

380 Of this amendment the labor representatives who attended the 1911 session of the Legislature in their report, issued by the California State Federation of Labor, said:

"This measure (Senate Constitutional Amendment 13), passed by the Senate, but we were successful in having it defeated in the Assembly. This measure was vigorously supported by anti-labor men throughout the State."

381 The vote by which Senate Constitutional Amendment 26 was adopted was as follows:

In the Senate:

For the amendment—Avey, Beban, Bell, Birdsall, Black, Boynton, Bryant, Burnett, Campbell, Cassidy, Curtin, Estudillo, Gates, Hans, Hare, Hewitt, Holohan, Hurd, Juilliard, Larkins, Lewis, Martinelli, Regan, Roseberry, Rush, Sanford, Shanahan, Stetson, Strobridge, Thompson, Tyrrell, Walker, Welch, and Wright—34.

Against the amendment—None.

In the Assembly:

For the amendment—Beatty, Beckett, Bennink, Bohnett, Brown, Butler, Callaghan, Cattell, Clark, Coghlan, Cogswell, Cronin, Crosby, Cunningham, Denegri, Farwell, Feeley, Freeman, Gaylord, Gerdes, Griffin of Modesto, Guill, Hamilton, Hayes, Hewitt, Jasper, Jones, Joel, Judson, Kehoe, Kennedy, Lamb, Lynch, Lyon of Los Angeles, Lyon of San Francisco, Malone, McDonald, Mendenhall, Mott, Nolan, Preisker, Randall, Rimlinger, Rodgers of San Francisco, Rosendale, Rutherford, Ryan, Slater, Smith, Stevenot, Sutherland, Tibbits, Wilson, Wyllie, and Young—55.

Against the amendment—None.

Anti-Japanese measures were introduced in each House, as in 1907 and 1909. By and large the measures were the same as those introduced at previous sessions, but, as at previous sessions, not one of the measures became a law.

THE JAPANESE BILLS.

The principal contest was over the so-called Anti-alien land bill. As a matter of fact, the measure was not an anti-alien land bill, strictly speaking, but an anti-Asiatic measure. Instead of providing that no alien shall hold land in California, it provided that "no alien who is not eligible to citizenship" shall hold real property in the State.

The bill passed the Senate by a vote of 29 to 3.[382] In the Assembly the measure was referred to the Judiciary Committee. It never got beyond that body.[383]

The Japanese treaty came before the Federal Senate for ratification while the Legislature was in session. That the treaty did not specifically make provision for the exclusion of Japanese laborers led to the introduc-

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382 The vote by which the "Anti-Alien Land bill" (Committee Substitute for Senate bills 2, 24, 167 and 1074) passed the Senate was as follows:

For the bill—Avey, Beban, Birdsall, Black, Boynton, Bryant, Burnett, Caminetti, Campbell, Cartwright, Cassidy, Curtin, Finn, Hans, Hare, Holohan, Juilliard, Larkins, Lewis, Regan, Roseberry, Sanford, Shanahan, Stetson, Strobridge, Tyrrell, Walker, Welch, and Wolfe—29.

Against the bill—Bell, Thompson, and Wright—3.

383 The Panama-Pacific Exposition Company took active part in the killing of the bill. The following telegram was received by many members of the Assembly:

> "On behalf of the Panama-Pacific International Exposition Company we emphatically protest against the passage of the Alien Land Law Senate bill as it is at present drawn, believing that the passage of this bill would work great injury to the exposition and we respectfully ask your best efforts to defeat it.
> "JAMES McNAB,
> "Chairman Cal. Legislative Committee."

Curiously enough, however, Assemblymen, who were leaders for Panama-Pacific policies on the floor of the Assembly, labored to force the Anti-Alien Land bill to a vote and passage.

tion of resolutions demanding that such restriction be provided. But the resolutions were tossed from committee to Senate, or to Assembly, floor, as the case might be, and got nowhere. In the meantime, President Taft informed Governor Johnson and Senator Wright, Chairman of the Senate Committee on Federal Relations, that the United States had the assurance of the Japanese Government that the then arrangements with reference to labor immigration to the United States will be maintained.[384]

"I know nothing of the treaty," said Governor Johnson in commenting on the President's assurances. *"The matter in which we of this State are interested is exclusion. The question is, therefore, Do we get exclusion? The President of the United States says that we do. And that ends the matter so far as I am concerned."*[385]

An unlooked-for feature of the agitation over the Japanese matters was a statement sent members of the Legislature by the Asiatic Exclusion League that anti-

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[384] President Taft's telegram to Governor Johnson on this point read as follows:

"The White House, Washington, D. C., 23-11.

"Hon. Hiram W. Johnson, Sacramento, Cal.:

"Telegram received. If treaty is ratified as proposed by me, arrangements and assurances that have heretofore existed in respect to Japanese immigration will more certainly secure existing status than the old treaty and you are at liberty to say so on my authority. WM. TAFT."

The telegram to Senator Wright was as follows:

"The White House, Washington, D. C., Feb. 23, 1911.

"Leroy A. Wright, Chairman Federal Relations Committee, Sacramento, Calif.:

"Replying to your message of the twenty-second relative to the new Japanese treaty. This Government has assurance of Japanese Government that present arrangement with reference to labor immigration to the United States will be effectively maintained and this fully meets the condition suggested in your telegram. WM. H. TAFT."

[385] Interview in The Sacramento Bee, Feb. 24, 1911.

Asiatic measures offered were not conducive to the final enactment of effective and permanent Asiatic exclusion legislation.[886] The League and its officers were roundly scored for their action. It is not probable, however, that the stand taken by the League affected the final outcome.

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886 The communication was in full as follows:

"Hon. Mr. Hewitt, Speaker of the Assembly, State Capitol, Sacramento, Cal.:

"The following is a copy of lettergram sent under current date:

"Senator Thos. Finn., Sacramento, Cal.:

"The executive board of the Asiatic Exclusion League regrets that regardless of previous communication on the subject we have not been afforded an opportunity to examine the anti-alien Asiatic bills which you introduced in the Senate Friday. It is the sense of the board that such bills as these at the present time are not conducive to the final enactment of effective and permanent Asiatic exclusion legislation and which only can be had through Act of Congress. The school segregation question has for some years been fairly satisfactorily settled and alien land tenure is judiciously and sanely dealt with by this league and the State labor bodies. We respectfully request that you proceed cautiously in this matter, as pressing measures of this kind now would mean irreparable injury to the exclusion cause.

"O. A. TVEITMOE, President.
"A. E. YOELL, Secretary-Treasurer."

Assemblyman Polsley, because of this change of front, took occasion, when requested by League officials to vote for other bills, to send the following sharp answer:

"Circular in reference to number of legislative bills received. While they will receive due consideration, I consider your back-down in reference to Japanese legislation does not entitle you to my consideration so far as your interest for the good of laboring men is concerned. Yours truly,

"HARRY POLSLEY."

In view of the League's letter to the members of the Legislature, the following Associated Press dispatch, printed throughout the State on April 17, 1911, is remarkable, to say the least:

"SAN FRANCISCO, April 16.—A report on Japanese labor conditions, read to-day before a meeting of the Asiatic Exclusion League here by Secretary Yoell of the league, criticized the State Legislature for its failure to pass the Alien Land bill.

" 'The worst thing that the State Legislature did was to defeat the Alien Land bill,' says the report. 'Both parties had proclaimed their love for the American workingman, and a majority of all candidates to the Legislature sent letters to this league, stating that they would support an Alien Land bill, and would not bow down to the big stick.' "

CHAPTER XXVIII.

CONCLUSION

Even if Successful at the Polls, and Again in Control of Senate and Assembly, the Old-Time Machine Could Not Wipe Out All the Good Accomplished at the Session of 1911.

The San Francisco Call, in its issue of March 20, referred to the 1911 Legislature, then in session, as "The Legislature of a Thousand Freaks." The San Francisco Chronicle, while frankly opposed to much of the legislation enacted, admitted that "whether one agrees or disagrees with the new laws enacted by the most industrious Legislature in our history, nobody will deny the conscientiousness and industry of its members, and few will doubt that in the main the new laws are excellent."

But aside from condemnation from such publications as The San Francisco Call, and faint praise from the more tactful Chronicle, this may be said of the California Legislature of 1911:

(1) Platform pledges to The People were observed and carried out.

(2) Generally speaking, every problem presented was met, by a majority of the members, fearlessly, regardless of political consequences to the individual.

(3) The legislation enacted brought the government of the State, and of its political subdivisions, closer to The People.

(4) The grip of monopoly-controlled politicians was broken, and California made a better and safer State, a more attractive State, for legitimate investor and home-seeker than it had been before the Legislature convened.

(5) No scandal marred the proceedings of the session. There was no large grafting, such as that practiced by representatives of the machine at former sessions when machine representatives would secure stock in a given corporation and employ the powerful influence of the Southern Pacific-backed machine to favor that corporation. There was no small grafting, such as stirred up the tempest in the tea-pot at the 1905 session, when four Senators were trapped in a $400 bribery transaction and expelled.[387] Undoubtedly the interests would have been willing to expend large sums to defeat some of the Progressive measures that went on the statute books, but a jump from the dome of the State Capitol would have been quite as secret and safe of execution as would have been the attempted use of money at the 1911 session.

The 1911 session of the Legislature was a bad session for bribe-givers and bribe-takers.

(6) Petty graft, which at former sessions ran into thousands of dollars, was eliminated. Dealers were al-

[387] One of the most amusing incidents of the California Legislature was the condemnation on the floor of the Senate (1905) of the four members who had been "taken with the goods on them." Senators who were proud of their connection with the organization, who habitually voted against good measures and for bad measures, voiced their utter condemnation of the four mere bribe-takers. But the condemned ones, being mere petty grafters, were not so menacing to the State as were some of those who condemned.

lowed for goods they delivered, not for what they saw fit to charge.[388]

The most important departure of the session was in the change of policy in the disposition of State tide lands. These lands will, with the opening of the Panama Canal, be priceless. The best development of the State requires that the water-fronts be kept free from monopoly control. If the municipalities adjacent to these water-front properties can best safeguard them for the whole people, then the change of policy is for the good of the State. But if a mistake has been made, and it be not corrected, then the next generation will charge a costly blunder to the progressive Legislature of 1911.

But the good that the 1911 Legislature did is destined to be felt for many years to come. Even though the machine were to secure control of the next Legislature, it could not wipe out the reforms that have been secured through constitutional amendment. Nor is it probable that the machine would dare hamper the Australian ballot with party circle and party column, which the 1911 Legislature wiped out. The People, now they have been given the privilege of a State-wide nominating vote for United

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388 This was amusingly illustrated when a bill for $56 for ice furnished the Assembly was cut by the Committee on Contingent Expenses to $19.20, the regular price value of the ice actually received. The ice-man sent the following letter to a member of the committee:

"Dear Ed.—I don't blame the chairman having a kick coming as the economical streak must be working overtime, as the Assembly has only used 1920 pounds for the forty-two days, not quite an average of fifty pounds a day, whereas two years ago never less than 150 pounds a day was used.

"I will take my hat off to the chairman, as I did not look over the account, supposing the same quantity was being used as in the past. Yours,

"IKE, THE ICEMAN."

States Senator, will never consent that this power shall be taken away.

All this, and more, The People of California owe to the 1911 Legislature.

Up to the session of the 1911 Legislature, representative government had, for a generation, been practically unknown in California. But with The People armed, as they now are, with the Initiative, the Referendum and the Recall, no government that is not representative, no government that fails to respond to the will of The People, need be tolerated.

APPENDIX

INAUGURAL ADDRESS OF GOVERNOR HIRAM W. JOHNSON.

To the Senate and Assembly of the State of California:

In the political struggle from which we have just emerged the issue was so sharply defined and so thoroughly understood that it may be superfluous for me to indicate the policy which in the ensuing four years will control the executive department of the State of California. The electorate has rendered its decision, a decision conclusive upon all its representatives; but while we know the sort of government demanded and decreed by the people, it may not be amiss to suggest the means by which that kind of administration may be attained and continued. "Successful and permanent government must rest primarily on recognition of the rights of men and the absolute sovereignty of the people. Upon these principles is based the superstructure of our republic. Their maintenance and perpetuation measure the life of the republic." It was upon this theory that we undertook originally to go to the people; it was this theory that was adopted by the people; it is upon this theory, so far as your Executive is concerned, that this government shall be henceforth conducted. The problem first presented to us, therefore, is how best can the government be made responsive to the people alone? Matters of material prosperity and advancement, conservation of resources, development of that which lies within our borders, are easy of solution when once the primal question of the people's rule shall have been determined. In some form or other nearly every governmental problem that involves the health, the happiness, or the prosperity of the State has arisen, because some private interest has intervened or has sought for its own gain to exploit either the resources or the politics of the State. I take it, therefore,

To Make Public Service Responsive to the People

that the first duty that is mine to perform is to eliminate every private interest from the government, and to make the public service of the State responsive solely to the people. The State is entitled to the highest efficiency in our public service, and that efficiency I shall endeavor at all times to give. It is obvious that the requisite degree of efficiency can not be attained where any public servant divides his allegiance between the public service and a private interest. Where under our political system, therefore, there exists any appointee of the Governor who is representing a political machine or a corporation that has been devoting itself in part to our politics, that appointee will be replaced by an official who will devote himself exclusively and solely to the service of the State. In this fashion, so far as it can be accomplished by the Executive, the government of California shall be made a government for the people. If there are in existence now any appointees who represent the system of politics which has been in vogue in this State for many years and who have divided their allegiance between the State and a private interest of any sort, or if there be in existence any Commission of like character, and I can not alone deal with either, then I shall look to the Legislature to aid me in my design to eliminate special interests from the government and to require from our officials the highest efficiency and an undivided allegiance; and I shall expect such legislative action to be taken as may be necessary to accomplish the desired result.

No Partiality to Be Shown

In pursuing this policy, so long as we deal only with the ward-heeler who holds a petty official position as a reward for political service, or with the weak and vacillating small politician, we will have the support and indeed the commendation of all the people and all the press; but as we go a little higher, with firm resolve and absolute determination we will begin to meet with opposition here and there to our plan, and various arguments, apparently put forth in good faith for the retention of this official or that, will make their appearance; and finally when we reach, if we do, some representative, not only of the former political master

of this State, the Southern Pacific Company, but an apostle of "big business" as well (that business that believes all government is a mere thing for exploitation and private gain), a storm of indignation will meet us from all of those who have been parties to or partisans of the political system that has obtained in the past; and particularly that portion of the public press which is responsive to private interest and believes that private interest should control our government, will, in mock indignation and pretended horror, cry out against the desecration of the public service and the awful politics which would permit the people to rule. Much, doubtless, will be said of destructiveness of abuse of power, of anarchistic tendencies and the like, and of the astounding and incomparable fitness of him who represents "big business" to represent us all. And in the end it may be that the very plan, simple and direct, to which we have set ourselves in this administration will be wholly distorted and will be understood only by those who, with singleness of purpose, are working for a return of popular government in California.

It matters not how powerful the individual may be who is in the service of the State, nor how much wealth and influence there may be behind him, nor how strenuously he may be supported by "big business" and by all that has been heretofore powerful and omnipotent in our political life, if he be the representative of Southern Pacific politics, or if he be one of that class who divides his allegiance to the State with a private interest and thus impairs his efficiency, I shall attack him the more readily because of his power and his influence and the wealth behind him, and I shall strive in respect to such a one in exactly the same way as with his weaker and less powerful accomplices. I prefer, as less dangerous to society, the political thug of the water front to the smugly respectable individual in broadcloth of pretended respectability who from ambush employs and uses that thug for his selfish political gain.

In the consummation of our design at last to have the people rule, we shall go forward, without malice or hatred,

not in animosity or personal hostility, but calmly, coolly, pertinaciously, unswervingly and with absolute determination, until the public service reflects only the public good and represents alone the people.

Initiative, Referendum and Recall

When, with your assistance, California's government shall be composed only of those who recognize one sovereign and master, the people, then is presented to us the question of, How best can we arm the people to protect themselves hereafter? If we can give to the people the means by which they may accomplish such other reforms as they desire, the means as well by which they may prevent the misuse of the power temporarily centralized in the Legislature and an admonitory and precautionary measure which will ever be present before weak officials, and the existence of which will prevent the necessity for its use, then all that lies in our power will have been done in the direction of safeguarding the future and for the perpetuation of the theory upon which we ourselves shall conduct this government. This means for accomplishing other reforms has been designated the "Initiative and the referendum," and the precautionary measure by which a recalcitrant official can be removed is designated the "Recall." And while I do not by any means believe the initiative, the referendum, and the recall are the panacea for all our political ills, yet they do give to the electorate the power of action when desired, and they do place in the hands of the people the means by which they may protect themselves. I recommend to you, therefore, and I most strongly urge, that the first step in our design to preserve and perpetuate popular government shall be the adoption of the initiative, the referendum, and the recall. I recognize that this must be accomplished, so far as the State is concerned, by constitutional amendment. But I hope that at the earliest possible date the amendments may be submitted to the people, and that you take the steps necessary for that purpose. I will not here go into detail as to the proposed measures. I have collected what I know many of your members have—the various constitutional

amendments now in force in different States—and at a future time, if desired, the detail to be applied in this State may be taken up. Suffice it to say, so far as the recall is concerned, did the solution of the matter rest with me, I would apply it to every official. I commend to you the proposition that, after all, the initiative and the referendum depend on our confidence in the people and in their ability to govern. The opponents of direct legislation and the recall, however they may phrase their opposition, in reality believe the people can not be trusted. On the other hand, those of us who espouse these measures do so because of our deep-rooted belief in popular government, and not only in the right of the people to govern, but in their ability to govern; and this leads us logically to the belief that if the people have the right, the ability, and the intelligence to elect, they have as well the right, ability and intelligence to reject or to recall; and this applies with equal force to an administrative or a judicial officer.

Recall of Judicial Officers

I suggest, therefore, that if you believe in the recall, and if in your wisdom you desire its adoption by the people, you make no exception in its application. It has been suggested that by immediate legislation you can make the recall applicable to counties without the necessity of constitutional amendment. If this be so, and if you believe in the adoption of this particular measure, there is no reason why the Legislature should not at once give to the counties of the State the right which we expect to accord to the whole State by virtue of constitutional amendment.

Were we to do nothing else during our terms of office than to require and compel an undivided allegiance to the State from all its servants, and then to place in the hands of the people the means by which they could continue that allegiance, with the power to legislate for themselves when they desired, we would have thus accomplished perhaps the greatest service that could be rendered our State. With public servants whose sole thought is the good of the State, the prosperity of the State is assured, exaction and extortion

from the people will be at an end, in every material aspect advancement will be ours, development and progress will follow as a matter of course, and popular government will be perpetuated.

Railroads and the State Government

For many years in the past, shippers, and those generally dealing with the Southern Pacific Company, have been demanding protection against the rates fixed by that corporation. The demand has been answered by the corporation by the simple expedient of taking over the government of the State; and instead of regulation of the railroads, as the framers of the new Constitution fondly hoped, the railroad has regulated the State.

To Californians it is quite unnecessary to recall the motives that actuated the framers of the new Constitution when Article XII was adopted. It was thought that the Railroad Commission thereby created would be the bulwark between the people and the exactions and extortions and discriminations of the transportation companies. That the scheme then adopted has not proved effective has become only too plain. That this arose because of the individuals constituting the Railroad Commission is in the main true, but it is also apparent there has been a settled purpose on the part of the Southern Pacific Company not only to elect its own Railroad Commission, but also wherever those Commissioners made any attempt, however feeble, to act, to arrest the powers of the Commission, and to have those powers circumscribed within the narrowest limits. All of us who recall the adoption of the new Constitution will remember that we then supposed the most plenary powers were conferred upon the Commission. It has been gravely asserted of late, however, by those representing the Railroad Company, and they insist that in the decisions of our courts there is foundation for the assertion, that the Constitution does not give the Commission power to fix absolute rates. In my opinion this power is conferred upon the Commission, and in this I am upheld by the Attorney-General of the State,

and by the very able and eminent attorneys who represent the various traffic associations.

Change in Railroad Commission

The people are indeed fortunate now in having a Railroad Commission of ability, integrity, energy and courage. I suggest to you, and I recommend, that you give to the Commission the amplest power that can be conferred upon it. The president of the Railroad Commission, Mr. John M. Eshleman, in conjunction with Attorney-General Webb, Senator Stetson and others, in all of whom we have the highest confidence, has been at work preparing a bill which shall meet the requirements of the case, and I commend to your particular attention this instrument.

I would suggest that an appropriation of at least $75,000 be made for the use of the Commission that it may, by careful hearing and the taking of evidence, determine the physical value of the transportation companies in the State of California, and that the Commission may have the power and the means to determine this physical value justly and fairly, and thereafter ascertain the value of improvements, betterments and the like, and upon the values thus determined may fix the railroad rates within the State of California.

The Bogie Man of Unconstitutionality

It is asserted that some ambiguity exists in that portion of the language of Section 22 of Article XII of the Constitution, which fixes the penalty when any railroad company shall fail or refuse to conform to rates established by the Commission or shall charge rates in excess thereof, and it is claimed that the use of the last phrase "or shall charge rates in excess thereof" excludes the power to punish discrimination by the railroad companies. The rational construction of the language used can lead to no such conclusion; but if you believe there is any ambiguity in the constitutional provision as it now exists, or any doubt of the power conferred by it upon the Railroad Commission, I would suggest that this matter be remedied by a constitutional amendment. In no event, however, should action in reference to needed legislation and that herein suggested be deferred. It

is not unlikely that the ingenuity of those who represent the railroad companies will pretend, and find some advocates in this, that all legislative action should await the amendment of the Constitution. I trust that you will not permit this specious plea to prevail, but that you will at once accord the power to the Commission that is designed by the bill referred to.

I beg of you not to permit the bogie man of the railroad companies, "Unconstitutionality," to deter you from enacting the legislation suggested, if you believe that legislation to be necessary; and I trust that none of us will be terrified by the threat of resort to the courts that follows the instant a railroad extortion is resented or attempted to be remedied. Let us do our full duty, now that at last we have a Railroad Commission that will do its full duty, and let us give this Commission all the power and aid and resources it requires; and if thereafter legitimate work done within the law and the Constitution shall be nullified, let the consequences rest with the nullifying power.

Amendment of Direct Primary Law

California took a long step toward popular government when the direct primary law was enacted. The first experiment under the direct primary law has been made, and despite the predictions of the cynical and the critical, the law has been a success and has come to stay. It may, however, be improved in many respects, and so recent has been the discussion of the minor imperfections of the act that they are familiar to us all; and I think the desire is general to remedy those defects. When the law shall have been amended and its imperfections corrected, and when it shall have been made less difficult for one to become a candidate for public office (and this should be one of the designs of amendment, I think), the important question of dealing with the candidacy for United States Senator remains. Of course, the Constitution of the United States requires that United States Senators shall be elected by State legislatures. Notwithstanding the popular demand expressed now for a quarter of a century that United States Senators should be

elected by direct vote of the people, we have been unable to amend the Federal Constitution; but the people in more than half the States are striving to effect the same result by indirection. The result is that our people, in common with those of most of the States, are seeking to have people themselves elect United States Senators. I do not think it is extravagant to say that nine electors out of ten in California desire the electorate directly to choose United States Senators, and if they possessed the power they would remove the selection wholly from the Legislature. The present primary law in its partisan features does not attain the desired result.

Oregon Plan for Election of United States Senators

And the present law, in its provision relating to United States Senators, is at variance with the wishes of an overwhelming majority of our people. Some of those who desire direct election may wish a selection made by parties, while others would eliminate all partisan features in such an election; yet all wish a selection by the whole State by plurality; and the present provisions of the primary law meet with the approval of none who really wish the election of United States Senators by direct vote. I suggest to you, therefore, that the present law be amended so that there be a State-wide advisory vote upon United States Senator; and the logical result of a desire to elect United States Senators by direct vote of the people is that that election shall be of any person who may be a candidate, no matter what party he may be affiliated with. For that reason I favor the Oregon plan, as it is termed, whereby the candidate for this office as for any other office may be voted for, and by which the candidate receiving the highest number of votes may be ultimately selected. If in your wisdom you believe we should not go to the full extent expressed in my views, then, in any event, the primary law should make the vote for United States Senator State-wide so that the vote of the whole State, irrespective of districts, shall control.

Adoption of Short Ballot Recommended

The most advanced thought in our nation has reached the conclusion that we can best avoid blind voting and best obtain the discrimination of the electorate by a short ballot. A very well-known editor in our State, during a recent lecture at Stanford University, challenged the faculty of that great institution to produce a single man who had cast an intelligent vote for the office of State Treasurer, and none was produced. Fortunately our State Treasurer is the highest type of citizen and official. The reason the challenge could not be met was that, in the hurry of our existence and in the engrossing importance of the contests for one or two offices, we can not or do not inform ourselves sufficiently regarding the candidates for minor offices. Again, we elect some officials whose duties are merely clerical or ministerial and whose qualifications naturally can not be well understood. Of course it is undesirable, and indeed, detrimental, that we should elect officials of whom we know nothing and concerning whom the electorate can not learn and can not discriminate. It is equally undesirable that those occupying merely clerical positions should be voted for by the entire electorate of the State. The result of a long ballot is that often candidates for minor offices are elected who are unfit or unsatisfactory. This conclusion, I think, has been reached by students and the far-seeing in every State in the Union. If we can remedy this condition it is our duty to do so, and it is plain that the remedy is by limiting the elective list of offices to those that are naturally conspicuous. One familiar with the subject recently said: "The little offices must either go off the ballot and be appointed, no matter how awkwardly, or they must be increased in real public importance by added powers until they rise into such eminence as to be visible to all the people. . . . That candidates should be conspicuous is vital. The people must be able to see what they are doing; they must know the candidates, otherwise they are not in control of the situation but are only going through the motions of controlling."

Absurdities of Present System

The Supreme Court of the State has asked that the Clerk of the Supreme Court, now elective, shall be made appointive. It is eminently just that this should be so. It is quite absurd that the people of an entire State should be called upon to vote for a clerk of the Supreme Court. The office of State Printer is merely administrative. Presumably an expert printer is selected to fill this position, and in the selection of an expert no reason at all exists for the entire electorate selecting that particular expert. The Surveyor-General likewise performs merely ministerial duties, presumably is only an expert, and his selection should be by appointment rather than election. The Superintendent of Public Instruction, an expert educator, is in the same category. The government of the United States is conducted with all of its departments with only two elective officers, the President and Vice-President. The President has surrounding him a Cabinet, the members of which perform all of the duties that are ministerial in character. The Treasurer of the State of California performs duties akin to those of the Secretary of the Treasury of the United States. He does nothing initiative in character, and his office could better be filled by appointment than election. The Secretary of State is in reality merely the head clerk of the State, and as a clerk of the Supreme Court may be better selected by the Supreme Court itself, so the Secretary of State, as chief clerk of the State, may be better selected by the head of the State. The Attorney-General could in like fashion be appointed, and if appointed his office could be made the general office of all legal departments of the State. Every attorneyship of the State that now exists, of commissions, and boards, and officials, could be put under his control, and a general scheme of State legal department could thus be successfully evolved—a department economical, efficient and permanent, and even non-partisan in its character if desired.

Advantages of Cabinet System

Were these various officials appointed by the Governor, the chief officer of the State could surround himself with a cabinet like the cabinet of the Chief Executive of the nation, and a more compact, perhaps more centralized and possibly a more efficient government established. I would leave the Controller an elective officer because, theoretically at least, the Controller is a check upon the other officials of the State, and thus should be independent. Were these suggestions carried out, the State ballot would consist of a Governor, Lieutenant-Governor, Controller, members of the judiciary, and members of the Legislature. Of course, any change we might make as herein suggested could not operate upon officials now in office or during any of our terms.

I recognize that the reform here suggested is radical and advanced, but I commend it to your careful consideration.

All of the parties in the State of California are committed to the policy of restoring the Australian ballot to its original form; and, therefore, I merely call to your attention that restoration as one of the duties that devolves upon us because of party pledges.

For a Non-Partisan Judiciary

And the return of the Australian ballot to the form which first we adopted in this State provides an easy mode for the redemption of the promises that have been made in respect to non-partisan judiciary. With the party circle eliminated, and with the names of the candidates for office printed immediately under the designation of the office, when upon the ballot the title of the judiciary is reached, the names of all the candidates may be printed without any party designation following those names; and in this fashion all of the candidates for judicial position will be presented to the people with nothing to indicate the political parties with which they have been affiliated.

Home Rule for Counties.

One of the most vexatious subjects with which legislatures have to deal is respecting classification, salaries, etc., of the various counties. The astonishing amount of time occupied by our Legislature in county government bills can only be understood by those who have been familiar with legislative work. I quote from a report by Controller Nye upon the subject:

"The first Legislature after the adoption of the Constitution commenced by making ten classes of counties, which number soon increased to more than forty, and at the present time there are fifty-eight classes, exactly equaling the number of counties.

"If there were no other evidence of the folly of trying to legislate on county salaries by general laws, this would be conclusive. But the change of these general laws to meet the supposed needs of different counties has been incessant. In the legislative session of 1905 there were forty-five amendments to the salary schedules of as many counties; in 1907 there were fifty-seven such amendments, one for every county then existing, and in 1909 there were fifty.

"So great are the evils of this form of legislation that we deem the only permanent remedy for them to be the submission and adoption of an amendment which will permit each county, proceeding along the same general lines as those prescribed for cities, to draft its own county government act, subject to ratification by the Legislature. The amendment should enumerate the subjects which may be embraced in these county government acts, or county charters, so framed, and they should include the number and compensation of officers, the granting or withholding of fees, the determination whether the county board of supervisors shall be elected by districts or at large, also the determination whether other county officers shall be elected or appointed, and such other similar matters of local concern as will not interfere with the operation of the general plan of State Government."

I quite agree with the views expressed by our Controller, and adopt his recommendation. It is but just and proper that counties should rule themselves just as cities do, and if this be accomplished we will have succeeded in taking from the Legislature perhaps a most vexatious subject, and one with which of necessity it oftentimes can not deal with intelligence, and we will have saved to the Legislature and

the State the immense amount of time that is now expended by the Legislature upon the subject. Of course, care must be exercised in any change that practical uniformity is preserved.

Civil Service and the Merit System

In the first subject with which I have dealt, I defined clearly my attitude in regard to public service. Too often it has occurred that appointments to the public service have been made solely because of political affiliations or a reward for political service. It is a design of the present administration to put in force the merit system, and it is our hope to continue that system by virtue of a civil service enactment. The committee recently appointed by the Republican State Central Committee presented an act, covering the subject, which I commend to you.

Conservation Measures Urged

In the abstract all agree upon the policy of conservation. It is only when we deal with conservation in the concrete that we find opposition to the enforcement of the doctrine enunciated originally by Gifford Pinchot and Theodore Roosevelt. Conservation means development, but development and preservation; and it would seem that no argument should be required on the question of preserving, so far as we may, for all of the people, those things which naturally belong to all. The great natural wealth of water in this State has been permitted, under our existing laws and lack of system, to be misappropriated and to be held to the great disadvantage of its economical development. The present laws in this respect should be amended. If it can be demonstrated that claims are wrongfully or illegally held, those claims should revert to the State. A rational and equitable code and method of procedure for water conservation and development should be adopted.

Reformatory Recommended

Humanity requires that we should provide a reformatory for first offenders. All of us are agreed upon this matter, and your wisdom will determine the best mode of its consummation.

Employers' Liability Law

Upon the righteousness of an Employers' Liability Law, no more apt expression can be found than that of ex-President Roosevelt on last Labor Day. He said:

"In what is called 'Employers' Liability' legislation other industrial countries have accepted the principle that the industry must bear the monetary burden of its human sacrifices, and that the employee who is injured shall have a fixed and definite sum. The United States still proceeds on an outworn and curiously improper principle, in accordance with which it has too often been held by the courts that the frightful burden of the accident shall be borne in its entirety by the very person least able to bear it. Fortunately, in a number of States—in Wisconsin and in New York, for instance—these defects in our industrial life are either being remedied or else are being made a subject of intelligent study, with a view to their remedy."

In this State all parties stand committed to a just and adequate law whereby the risk of the employment shall be placed not upon the employee alone, but upon the employment itself. Some new legal questions will be required to be solved in this connection, and the fellow servant rule now in vogue in this State will probably be abrogated and the doctrine of contributory negligence abridged. It is hoped that those in our State who have given most study to this subject will soon present to you a comprehensive bill, and when this shall have been done the matter will again be made a subject of communication by me.

Proud of California

I have purposely refrained to-day from indulging in panegyrics upon the beauty, grandeur, wealth and prosperity of our State; or from solemnly declaring that we will foster industries, and aid in all that is material. It goes without saying that, whatever political or other differences may exist among our citizens, all are proud of California, its unbounded resources, its unsurpassed scenic grandeur, its climatic conditions that compel the wondering admiration of the world; and all will devotedly lend their aid to the proper development of the State, to the protection and preservation of that which our citizens have acquired, and that which industrially is in our midst. Ours of course is a glorious destiny, to the

promotion and consummation of which we look forward with pride and affection, and to which we pledge our highest endeavor. Hand in hand with that prosperity and material development that we foster, and that will be ours practically in any event, goes political development. The hope of governmental accomplishment for progress and purity politically is with us in this new era. This hope and wish for accomplishment for the supremacy of the right and its maintenance, I believe to be with every member of the Legislature. It is in no partisan spirit that I have addressed you; it is in no partisan spirit that I appeal to you for aid. Democrats and Republicans alike are citizens, and equal patriotism is in each. Your aid, your comfort, your highest resolve and endeavor, I bespeak, not as Republicans or Democrats, but as representatives of all the people of all classes and political affiliations, as patriots indeed, for the advancement and progress and righteousness and uplift of California.

And may God in his mercy grant us the strength and the courage to do the right!

GOVERNOR JOHNSON'S MESSAGE ON THE STATE PRISON EMPLOYMENT BILL.

To the Legislature of the State of California:

There has been introduced to-day in the Senate and Assembly a bill designated "An Act to authorize and regulate the employment of prisoners in the State prisons of this State, and to provide for the disposition of the products of their skill and labor," the design of which is to enable the prisoners in the State prisons to manufacture such articles, materials, and supplies as may be needed for any public use by the State, or any county or municipality, or that may be used or required in any State institution.

This message is sent that you may have before you the purpose of the bill and the reasons actuating Warden Hoyle, of San Quentin, in its preparation, and that have induced me to recommend it.

In the care and maintenance of convicts, the first problem that presents itself to the State is to furnish appropriate and rational employment, not only that prisoners may be kept from idleness, but that they may be taught during the period of their confinement useful trades, and may after the expiration of their terms be able to follow legitimate employment and to rehabilitate themselves. The most efficacious manner in which this humanitarian doctrine can be consummated is in regular hours of employment, in regular trades for those who are confined within the prisons, and by such regulations to provide the physical and mental activity necessary, and thus to afford the possibility, the hope, and the opportunity for ultimate regeneration.

The other reason why the proposed measure will be advantageous is upon the financial side. If permission to manufacture and produce the articles mentioned be accorded, the State prisons in great measure will be self-supporting, and it is the hope of Warden Hoyle, based upon experience in other places,—and his hope seems to me justified,—that within a few years the State prisons of the State of California, under

the plan suggested, will be wholly self-supporting, and will not require further aid of the government.

The objection to the manufacture of articles in the State prisons comes generally, and justly, I think, from the free labor of the State. The purpose of the bill that has been introduced is to permit only those articles to be manufactured which are used by the State, the county, or the municipality, and does not permit their sale privately.

The restrictions within the bill are such that prison labor shall not be brought in competition with free labor. The particular measure that has been introduced has been submitted to the San Francisco Labor Council, and has received the sanction of that body.

It is presented to you, therefore, with a full knowledge and approval of labor within the State of California.

The cost of maintaining the prisons of the State of California is, in round figures, something over half a million dollars per annum. If this cost can be met in any measure by the proposed plan, apparently it should commend itself to us all. Beyond this, if it meets the requirements first suggested, of furnishing the necessary activity physically and mentally to prisoners, and with the learning of useful trades or occupations will enable prisoners better to care for themselves after their release, an amply sufficient reason is presented for its passage. In order to carry out the proposed scheme, no appropriation is asked from the Legislature.

Two Acts are presented with the bill, which establish from the present earnings of the prison a fund which may be used in preparing for the manufacture and production of the articles named.

I might add that the scheme proposed, and indeed the bill as drawn, is fashioned upon the law that is now in force in the State of New York, and which has worked so beneficially there.

The bills and the facts set forth in this message are submitted for your consideration.

Respectfully,

January 30, 1911. HIRAM W. JOHNSON, Governor.

Direct Vote for United States Senator

We recommend the enactment by the next Legislature, and transmission to Congress, of an act or joint resolution favoring an amendment to the Constitution of the United States providing for the election of the United States Senators by direct vote of the people, and, pending the adoption of this amendment, such a revision of the primary law of the State as shall afford a State-at-large advisory vote as to the election of United States Senator.

We recognize that the principal achievement of this first direct primary nominating election in California, and of the State government to be elected at the general election following it, must be the destruction of the system and influences which have hitherto hindered constructive legislative and administrative reforms. Unless this is done, nothing else can be undertaken with the hope of success. But this being now assured, it becomes possible to inaugurate a comprehensive plan of constructive legislation and we recommend to the Legislature and the Governor the following measures:

Constructive Legislation Recommended

A constitutional amendment providing for a shorter ballot, reducing to a minimum the number of elective offices, and thereby relieving the confusion caused by a multiplicity of candidates for minor offices.

The restoration of the true Australian ballot, as originally enacted in California, without the party circle or party column.

The placing of the names of judicial candidates on the primary and general election ballots without party designation.

The submission to the people of constitutional amendments providing for direct legislation in the State and in the county and local governments, through the initiative, the referendum and the recall.

A county government act which shall provide an improved system of county government, with the greatest possible measure of home rule compatible with necessary uniformity.

Such revision of the laws of criminal procedure in this

State as shall make the administration of justice more speedy and certain, and prevent the delays in the punishment of criminals and escape of offenders upon technical grounds not connected with the guilt or innocence of the accused.

The enactment of laws for the establishment in California of a modern reformatory for first offenders, so as to make it possible to apply effective reformation treatment, and to separate from the older and confirmed criminals the first offenders and younger prisoners, whom experience has shown can be permanently reformed by proper discipline.

Partisan Patronage Condemned

The elimination of partisan patronage from the administrative department of government, and in general the introduction of the merit system in the public service.

Systematic examination of the business and accounting methods of the various State and county offices, with a view to introducing a system of uniform accounting and providing the highest degree of economy and efficiency now made practicable by the development of modern business methods.

Indorse Conservation Policies

[We indorse and heartily approve of the admirable policies of national conservation initiated by President Roosevelt and organized by Gifford Pinchot. We recommend the enactment by the Legislature of laws which, without conflicting with national conservation, shall apply similar standards of the conservation of such natural resources as come under the jurisdiction of the State.]

In the contest of the wage worker and the capitalist, we stand for the square deal for both, and favor legislation by State and Nation which will improve the conditions of labor and best conserve the source of all wealth—human life.

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Labor Legislation Necessary

We recognize that the wage earner has the same right to organize for the improvement of the conditions under which he labors that the capitalist has to use his capital in corporate enterprises. Both forms of organization should be given equal opportunity before the law to carry out their legitimate aims.

An employers' liability act which shall put upon the industry the charges of its risks of human life and limb, along the lines recommended by Theodore Roosevelt.

The better definition and limitation of the rights of courts in the issuance of injunction in labor disputes along the lines recommended by President Taft to the last National Republican convention.

To Make Railroad Commission Effective

Such additional legislation or constitutional amendments as may be necessary to make the State Railroad Commission fully effective, including provision for the physical valuation of railroad properties as one essential step toward a true basis for the fixing of rates, provisions for a uniform system of accounting, for giving the Commission power to initiate action, and such further provisions for the regulation of rates and services as shall fully and effectively protect the rights of both the people and the railroads.

Public Service Commission

We recommend the submission and adoption of a constitutional amendment providing for the appointment of a public service commission which shall have general supervision of all public service corporations and fix the rates to be charged by them, such commission to be similar to those now in existence in other States, where experience has demonstrated their usefulness.

We demand the strict and vigorous enforcement of the anti-trust laws against all offenders.

We recommend to the favorable consideration of the voters of California the propositions to be submitted to them at the coming election, providing for the improvement of the

11—A simplified direct primary law and the selection of United States Senators by the direct vote of the people.

12—The initiative, referendum and recall in State and local governments.

13—Strict regulation of all public service corporations and the physical valuation of their properties for the purpose of protecting the public from exorbitant rates and discrimination.

14—An active, honest and efficient discharge of the duties incumbent upon the State's Railroad Commission.

15—Internal improvements, including particularly the improvement of highways, waterways and harbors.

16—The improvement of our local school system, including practical training and preparation in the useful arts, trades and occupations, compulsory education and avoidance of the practice of frequently changing the text books.

17—The fostering of the agricultural, horticultural, viticultural and live-stock industries of California.

18—The encouragement of manufacturing to the end that our domestic wants may be supplied by home industry.

19—Publicity in the conduct of the State Fish and Game Commission, showing in detail the work done and the particular items of receipt and expenditure, and the removal of special privilege in the protection and propagation of our fish and game.

20—The adoption of the Sanford bill preventing Asiatics, who are not eligible to citizenship in America, from owning or leasing land in California.

21—The establishment and operation by the Government of a steamship line between Pacific Coast points and the Pacific terminus of the Panama Railway.

22—The conservation of remaining natural resources for the benefit of the whole people and the enactment of laws which will forever prevent their seizure and control by private monopoly, and to this end we urge the exercise of all powers national, state and municipal, both separately and in co-operation.

1907-8 PLATFORM LINCOLN-ROOSEVELT LEAGUE.

Adopted at Oakland Aug. 1, 1907

Whereas, The organization and control of the Republican party of the State of California have fallen into the hands of the political bureau of the Southern Pacific Company, which has usurped functions of right belonging to the Republican party and its membership; and,

Whereas, We have undoubted faith in the ability of that great party to govern itself; and,

Whereas, We resent this usurpation, now, therefore, be it resolved, that we do hereby pledge our fealty to the principles of the Republican party, and proclaim the following platform in order that "Government of the people, by the people and for the people may not perish from the earth."

The immediate and essential purposes of the Lincoln-Roosevelt Republican League movement in California are:

The emancipation of the Republican party in California from domination by the political bureau of the Southern Pacific Railroad Company and allied interests, and the reorganization of the State committee to that end.

The selection of delegates to the next Republican national convention pledged to vote and work for the nomination of a candidate known to be truly committed to, and identified with President Roosevelt's policies, and to oppose the nomination of any reactionary styled "safe and sane" by the great corporate interests.

The election of a free, honest and capable Legislature, truly representative of the common interests of the people of California.

The pledging of all delegates to conventions against the iniquitous practice of "trading" whereby political bosses ef-

11—A simplified direct primary law and the selection of United States Senators by the direct vote of the people.

12—The initiative, referendum and recall in State and local governments.

13—Strict regulation of all public service corporations and the physical valuation of their properties for the purpose of protecting the public from exorbitant rates and discrimination.

14—An active, honest and efficient discharge of the duties incumbent upon the State's Railroad Commission.

15—Internal improvements, including particularly the improvement of highways, waterways and harbors.

16—The improvement of our local school system, including practical training and preparation in the useful arts, trades and occupations, compulsory education and avoidance of the practice of frequently changing the text books.

17—The fostering of the agricultural, horticultural, viticultural and live-stock industries of California.

18—The encouragement of manufacturing to the end that our domestic wants may be supplied by home industry.

19—Publicity in the conduct of the State Fish and Game Commission, showing in detail the work done and the particular items of receipt and expenditure, and the removal of special privilege in the protection and propagation of our fish and game.

20—The adoption of the Sanford bill preventing Asiatics, who are not eligible to citizenship in America, from owning or leasing land in California.

21—The establishment and operation by the Government of a steamship line between Pacific Coast points and the Pacific terminus of the Panama Railway.

22—The conservation of remaining natural resources for the benefit of the whole people and the enactment of laws which will forever prevent their seizure and control by private monopoly, and to this end we urge the exercise of all powers national, state and municipal, both separately and in co-operation.

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EXPLANATION OF VOTES FOR UNITED STATES SENATOR.

From Senate and Assembly Journals, Jan. 10, 1911

Senator Shanahan—I shall cast my vote for United States Senator in favor of John D. Works for the following reasons:

1. He received all of the Democratic votes cast for United States Senator in my senatorial district at the primary election held on August 16, 1910.

2. He received the highest vote cast by Democrats for United States Senator in each of a large plurality of legislative districts at the said primary election.

3. He received a plurality at the said primary election of all the Democratic votes cast for that office.

4. He received a plurality of all the votes cast by members of all political parties at the said primary election for that office.

For the reasons above given, numbered 1 and 2, under the law and fact I am directed to vote for John D. Works. Under the reasons numbered 3 and 4, I am held to vote for him on the broad principle that I have always stood for, and now stand for, and that the Democratic party of this State stands for, that a State-wide vote should determine the choice of United States Senators.

The paucity of the Democratic vote cast at the primaries does not alter the law, or the fact, or the principle involved. Under the law and fact and principle involved I shall record my vote for John D. Works for United States Senator; and ask permission of the Senate that this explanation be printed in the Journal of this day's proceedings.

Senator Caminetti—Committed to the principle that United States Senators should be elected by direct vote of the

people, and now governed by the position I took during the last campaign, I feel in duty bound at this session to follow the advisory State-wide vote cast at the recent election, wherein Hon. John D. Works received a plurality of the votes canvassed for that office. My position two years ago on this question was directed by what I considered the wish of the people of my district in the absence of a State vote. Under other conditions and other circumstances I would at this time cheerfully favor Hon. John E. Raker, as I look upon him not only as a progressive Democrat, but also as a progressive American, committed to principles and policies which guarantee people's rule and protect people's rights in State and Nation.

Senator Burnett—I made the original motion in the Senate caucus that the vote on United States Senator be advisory by district.

Nineteen men in the Senate of 1909 were each responsible for the advisory by district provision, as any one of them voting on the other side would have made the provision State-wide.

The provision of the Act that the vote is advisory by district operates in such a manner that those who believe they are bound by it under the law are helpless, while any man who may disregard the primary law is free to vote for whom he pleases.

This places the law-abiding man at the mercy of the one who disregards the law, having the same effect as the provision in the old party primary law, that the voter who would swear it was his present intention to vote for a ticket at the following election would swing from side to side, while the man who regarded his oath would not do so.

A member of the Legislature is advised under the law to vote either for the candidate for United States Senator of his own political faith who carries his district or for the candidate of his own political faith who carries the greatest

number of districts electing members of the Legislature of his own political faith.

This results in the following condition: That wherever legislators advised to vote for a certain candidate do not follow the advice of their constituents they have those who believe they are bound under the law at the greatest disadvantage.

Members of an opposing political faith who have no candidate (such as the Democratic party in this instance) are left as free rovers to determine the successful candidate of another party (in this instance the Republican), and together with such members as may disregard the advisory vote for United States Senator may easily defeat the candidate carrying the largest number of advised districts.

Again, Democrats may be elected who have pledged themselves to a certain Republican candidate where their party has no candidate at the primaries, and this again defeats this Act. This may, in a special instance, work for good but it may just as readily work for evil.

After lying awake many hours considering this matter last night, I came to the final conclusion that no member of the Legislature is justified by any act of his, whether in the form of a law or otherwise, to so delegate the powers conferred upon him by the Constitution of the United States that the present condition of affairs may exist, and that he is not bound under any such law even if he was largely instrumental in passing it.

I desire, and have always desired, to cast my vote to the best of my ability in the interest of the general welfare of the State. I believe the present law as affecting election of United States Senators to be an error.

It is not contemplated under the Constitution of the United States that the power of the legislators of the various States to elect United States Senators shall be delegated to various groups of electors in political parties, but rather that the legislators shall vote as independent men solely guided by the best interest of the State.

However, we know that this is not always the attitude of

people, and now governed by the position I took during the last campaign, I feel in duty bound at this session to follow the advisory State-wide vote cast at the recent election, wherein Hon. John D. Works received a plurality of the votes canvassed for that office. My position two years ago on this question was directed by what I considered the wish of the people of my district in the absence of a State vote. Under other conditions and other circumstances I would at this time cheerfully favor Hon. John E. Raker, as I look upon him not only as a progressive Democrat, but also as a progressive American, committed to principles and policies which guarantee people's rule and protect people's rights in State and Nation.

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After lying awake many hours considering this matter last night, I came to the final conclusion that no member of the Legislature is justified by any act of his, whether in the form of a law or otherwise, to so delegate the powers conferred upon him by the Constitution of the United States that the present condition of affairs may exist, and that he is not bound under any such law even if he was largely instrumental in passing it.

I desire, and have always desired, to cast my vote to the best of my ability in the interest of the general welfare of the State. I believe the present law as affecting election of United States Senators to be an error.

It is not contemplated under the Constitution of the United States that the power of the legislators of the various States to elect United States Senators shall be delegated to various groups of electors in political parties, but rather that the legislators shall vote as independent men solely guided by the best interest of the State.

However, we know that this is not always the attitude of

ment of the final issue. Consequently, I vote for Judge Works. Let us now have the Oregon plan.

Assemblyman Mendenhall—Having always believed in the election of United States Senators by direct vote of the people, and as Works received the plurality of such vote in the State, I deem it my duty in the interests of good government to vote for Judge Works for United States Senator.

Assemblyman Walsh—Believing the last State primary election gave the nearest expression possible toward a State-wide vote for United States Senator in casting a plurality vote for Judge Works, and as the Democratic platform, the platform of the party of which I have the honor to represent, expressed themselves in no uncertain terms as favoring the election of a United States Senator by direct vote of the people, I therefore cast my vote for Judge Works, feeling that I am carrying out the expressions of my party with the best means at hand.

and as Works received the majority of such vote in my district, I deem it my duty to vote for Judge Works for United States Senator.

Assemblyman Wilson—In explanation of my vote for John D. Works for Senator from California in the United States Congress, I wish to say that my district cast for John D. Works a majority of its advisory vote for United States Senator. I favor the direct popular election of United States Senator, and under our present primary law the advisory vote so cast is the best information which I can obtain as to the wishes of my constituents in the matter of electing a United States Senator. In observance of that expressed wish I cast my vote for John D. Works.

Assemblyman Coghlan—Section 2 of the Act to regulate Primary Elections reads in part as follows: "The vote for candidates for United States Senators shall be an advisory vote for the purpose of ascertaining the sentiment of the voters in the respective . . . Assembly District in the respective parties."

I believe that under the terms of section 1 of the Primary Election Law, I am bound, unless I disregard the will of the good people of the Forty-first Assembly District, to vote for Albert G. Spalding for United States Senator. To do otherwise would be, in my humble opinion, a base repudiation of the law, and an evidence of flagrant disrespect to the wishes of my constituents. I have been too long honored by the people of my district to close my ears to their voices. They have cast my vote for me here. I know of nothing that I have oftener wished for than an expression of opinion by my own people on the many questions that have been here propounded in the last seven years, and I am content.

Assemblyman Slater—I believe, and have always believed, in the election of United States Senators by direct vote of the people, and consider this step initial to the accomplish-

anti-racetrack gambling legislation is unwarranted and that gambling hells such as were operated at Emeryville are justifiable; if he believes that through corruption of the Australian ballot The People should be denied intelligent expression of their purposes at the polls; if he believes that the various communities should be denied the privilege of saying whether or not they want to license saloons; if he holds to the theory that the people should not be permitted to initiate laws, then all that he has to do with these tables is to call the star which is intended to represent a vote for Progressive policies, a vote against progress and reform; and to count the circle, which in these tables stands for a vote against progress and reform, a vote for stability and good government. The tables, therefore, in the hands of a reader out of sympathy with the Progressive movement, correct themselves, and if in the designation of any of the votes the reader finds what he regards as an injustice, he has before him the data to correct the injustice. All he has to do is to call what is marked a good vote a bad vote, and what is down as a bad vote, a good vote. There is no intention, therefore, to say, arbitrarily, what is right and what is wrong. The data are furnished the reader, however, from which he can estimate the records of the various members of the Legislature for himself.

TABLES I AND II, SENATE AND ASSEMBLY TEST VOTES.

The subjects of test votes selected for the tables of the 1911 review, include such legislation as was pledged in the Republican and Democratic platforms, and legislation which deals with moral issues such as racetrack gambling and Local Option. To these have been added, in the Senate table, the vote which relieved Senator Cassidy from the necessity of explaining, under cross-examination, his absence from the Senate Chamber when the Anti-Injunction bill was under

TABLES OF VOTES.

The principal criticism of "The Story of the California Legislature of 1909" was that the test votes were arbitrarily selected.

Such contention is not unreasonable, but it is indisputable that certain issues before the public are recognized as either fundamental, or so far-reaching that large numbers are interested in them one way or the other. Further, it is unquestionably true that at the 1909 session of the Legislature, on fundamental questions, the lines were sharply drawn between that element known as the machine on the one side, and its opponents on the other. The votes on these dividing questions, were selected as the tests by which the 1909 Legislature was to be measured.

It is interesting to note in this connection, that every reform included in the list of test issues upon which the 1909 tables were based, was realized at the 1911 session of the Legislature.

Thus the 1909 tables include the vote on racetrack gambling, the vote on the provision of the Direct Primary bill to grant The People State-wide practical expression of their choice for United States Senators, the vote on the passage of the Local Option bill, the vote on the restoration of the Australian ballot to its original simplicity and effectiveness, the vote on the Initiative amendment, the vote on a practical Railroad Regulation bill, and the vote on the measure to take the judiciary out of politics.

Justification of the 1909 tables is found in the realization of these reforms in 1911. And then again, the tables were so arranged in 1909—an arrangement which has been followed this year—as to carry their own correction, if the reader deemed such correction necessary. Thus, if the reader holds to a view that The People should not have the means to a direct vote for United States Senator, if he believes that

motion to exclude the judiciary from the provisions of the Recall.

Column F shows the votes on the Recall Amendment itself. See Chapter VIII.

Columns G, Senate and Assembly, show the votes on the motions in Senate and Assembly to substitute the township unit of prohibition in the Local Option bill. This was clearly the test vote on Local Option. See Chapters XV, XVI, XVII.

Columns H, Senate and Assembly, show the votes on the Walker-Young Anti-Racetrack Gambling bill. See Chapter XIV.

Columns I, Senate and Assembly, show the votes on the Equal Suffrage Amendment. See Chapter XXVII.

Columns L, Senate and Assembly, show the votes on the measure to restore the Australian Ballot to its original simplicity and effectiveness. See Chapter VI.

Columns M, Senate and Assembly, show the votes on the Short Ballot bill to make the office of the State Printer appointive. See Chapter XXVII.

Columns N, Senate and Assembly, show the votes on the bill to have the State capitol and grounds brought under responsible management. See Chapter XXVII.

Columns O, Senate and Assembly, show the votes on Senate Constitutional Amendment No. 26, which does away with reversals in criminal cases on mere technicalities. See Chapter XXVII.

Columns P, Senate and Assembly, show the votes on the bill to make the Bank Commissioner's tenure of office at the pleasure of the Governor. See Chapter XXVII.

Columns Q, Senate and Assembly, show the votes on Senate Constitutional Amendment No. 5, granting to counties the advantages of home rule.

SENATE VOTES.

Column J, Senate table, shows the vote on Senator Wright's amendment to the Direct Primary measure, as is explained in Chapter V.

Column K, Senate table, shows the vote on the Direct Primary measure, as explained in Chapter V.

Column R, Senate table, shows the vote on Senator Curtin's amendment to the Conservation bill, as explained in Chapter XII.

Column S, Senate table, shows the vote on the Conservation bill (A. B. 788) which, while it was not the most important Conservation bill before the Legislature, was the one over which opposition developed. See Chapter XII.

Column T, Senate table, shows the vote by which Senator Cassidy was relieved of the necessity of explaining, under cross-examination, his disappearance from the Senate Chamber at the time the Anti-Injunction bill was under discussion. See Chapter XXIII.

ASSEMBLY VOTES.

Column J, Assembly table, shows the vote in the Assembly on the Direct Primary measure. See Chapter V.

Column K, Assembly table, shows the vote on Chandler's resolution, condemning the action of the Federal Senate in "whitewashing" Lorimer.

Column R, Assembly table, shows the vote on the Conservation bill (A. B. 788), as described in Chapter XII.

RECORDS ON LOCAL OPTION.

Table VI shows the records of Senators on the Local Option bill, and table V, the records of Assemblymen on the same measure. See Chapters XV, XVI, XVII.

VOTES ON LABOR ISSUES.

Table III includes 20 so-called Labor measures voted upon in the Senate; Table IV shows 19 Labor measures voted upon in the Assembly.

The first 16 votes of each table—Columns A to P inclusive—cover the same subjects. Owing to the different treatment of the Eight-Hour bill in Senate and Assembly, and the fact that the Compulsory Arbitration bill (S. B. 918) did not come to a vote in the Assembly at all, the last four votes in the Assembly table do not deal with the same issues as the last five of the Senate table.

Although column M of the Senate table shows a direct vote for the Anti-Injunction bill (S. B. 965), while the Assembly vote M is merely a vote to make the measure a matter of urgency, still the votes of individual members of the two Houses had practically the same effect for or against the measure in both cases. See Chapter XXIII.

As there are 80 members of the Assembly, and 19 Labor measures are included in the Assembly table, the possible total vote on the 19 measures was 1520.

Of the possible 1520 votes, 1012 were cast for the bills, while 116 were cast against them. This leaves 392 unaccounted for. In other words, on these 19 Labor bills considered in the Assembly, nearly one-third of the votes that could have been cast for or against them were not cast.

In the Senate, of the possible 800 votes on the 20 subjects included in the Senate table, 529 were cast for Labor policies, only 79 against, while 192 votes were not cast at all.

By comparing this total vote with the tables of test votes (Table I for the Senate, and Table II for the Assembly) it will be seen that the number of failures to vote on Labor issues is suggestive.

In the Assembly, for example, there was a possible total vote of 1440 for the 18 test votes. Of these 1440 votes, 1031

were cast for Progressive policies, and 132 against, leaving 277 which were not cast at all.

To be sure, the Assembly table of Labor votes includes 19 subjects, while the Assembly test votes given, number 18 only. However, the unaccounted-for 392 Assembly votes on Labor issues are out of all proportion to the 277 Assembly votes on test questions.

This is even more strikingly illustrated in the Senate. The Senate table of test votes includes the same number as the Senate table showing votes on Labor issues. The possible total vote in each case is 800.

But the table of test votes shows that of the 800, 572 were cast for Progressive policies and 111 against, while only 117 votes are unaccounted for.

As has been seen, the unaccounted-for votes on Labor issues shown in the Senate table is 192.

One of the most interesting studies of the tables showing Labor votes, is to note those members who failed to vote on Labor issues.

This can be done readily by studying the figures under the head of "totals" at the right of the table. The first column of figures shows the vote for policies supported by the Labor lobby; the second column shows the vote against policies supported by the Labor lobby; while the third column shows the number of times the member did not vote on these issues.

The names of the members of Senate and Assembly are arranged alphabetically in these tables. By a curious coincident, No. 17 is Senator Finn of San Francisco, the well-known Union Labor party politician; while No. 18, under the alphabetical arrangement, is Senator Gates, who is condemned, as an opponent of Labor measures, in the report of the Labor representatives who attended the 1911 session, and which was issued by The California State Federation of Labor. However, on the 20 votes on Labor issues included in the Senate table, Senator Gates voted 13 times for the policies as supported by the Labor lobby; he voted six times against such policies; he was absent on one roll call only.

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On the other hand, Senator Finn voted 10 times for the policies supported by the Labor lobby, which was 3 times less than did the so-called enemy of labor, Gates. Senator Finn is shown to have voted only once against these policies, but on 9 roll calls he is not recorded as voting.

For subject matter of votes shown under columns B, C, D, E, F, G, H, I and J, Senate and Assembly tables, see Chapter XVIII, "Labor and The Legislature."

For columns A and K, Senate and Assembly tables, see Chapter XIX.

For columns L, Senate and Assembly tables, see Chapter XXII.

For columns M, Senate and Assembly tables, see Chapter XXIII.

For columns N, O and P, Senate and Assembly tables, see Chapter XVIII.

For column Q, Senate table, see Chapter XXI.

For column Q, Assembly table, see Chapter XVIII.

For columns R and S, Senate and Assembly tables, and T, Senate Table, see Chapter XX.

It is not pretended that every vote on every labor issue before the Legislature is included in these tables. But the votes that are shown include those on the principal issues other than political for which Labor, through its duly accredited representatives, contended at the 1911 session of the Legislature.

This statement is borne out by the report on Labor measures considered at the 1911 session of the California Legislature, issued by the California State Federation of Labor. A copy of that report can be had by addressing the Secretary of that organization, Labor Temple, 316 14th Street, San Francisco.

Session 1911, on Twenty Test Votes.

K: Vote on Direct Primary measure.		L: Vote on bill to restore the Australian ballot.		M: Vote on Short Ballot bill to make office State Printer appointive.		N: Vote on bill to put State Capitol and grounds under responsible management.		O: Vote on S. C. A. 26—Reversals in criminal cases.		P: Vote on bill to make Bank Commissioner hold office at pleasure of Governor.		Q: Vote on S. C. A. 5—Granting home rule to counties.		R: Vote on Curtin amendment to A. B. 788—Conservation bill.		S: Vote on A. B. 788.		T: Vote on motion that would have put Senator Cassidy on his defense.		TOTALS. For Progressive Policies.	Against Progressive Policies.	Absent.
Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No			
*		*		*		*		*		*		*		0		*		*		18	1	1
*		*				*		*		*				0		*			0	12	3	5
		*		*		*		*		*		*			*	*		*		19		1
*		*		*		*						*		0		*		*		14	2	4
*		*		*		*		*		*		*			*	*		*		18	1	1
*		*		*		*		*		*		*			*	*			0	18	1	1
*		*		*		*		*		*		*		0		*		*		18	2	
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*		*				*				*		*		0		*			0	15	3	2
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*										*		*							0	11	1	8
*		*			0		0	*		*		*		0		*				11	7	2
*		*			0	*		*				*		0					0	9	7	4
*		*				*						*			*	*		*		15	1	4
		*				*		*		*					*			*		12	1	7
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*		*			0			*						0		*			0	9	5	6
*		*			0			*		*					*					11	2	7
		*		*		*		*		*		*			*	*		*		15	1	4
*		*		*		*		*		*		*			*	*			0	17	2	1
*		*			0	*		*		*		*			*	*				15	3	2
*		*		*		*		*		*		*		0		*			0	16	3	1
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*		*		*		*		*		*					*	*			0	16	1	3
*		*			0		0	*				*		0		*			0	11	8	1
*						*		*		*			0		*				0	13	4	3
*		*		*		*		*		*		*		0		*		*		17	1	2
*		*			0	*		*		*		*			*	*			0	17	3	
*		*			0		0	*		*					*				0	11	5	4
*		*			0	*		*		*		*†			*	*			0	18	2	
*				*		*		*		*		*		0		*		*		17	2	1
		*		*		*		*		*		*		0		*		*		16	1	3
*				*		*		*		*		*			*	*		*		18	1	1
*		*		*		*		*		*		*			*				0	16	2	2
*		*		*		*		*		*		*			*	*			0	18	1	1
		*				*		*		*		*							0	12	2	6
*					0		0				0		0	0		*			0	3	12	5
*		*		*			0	*			0	*		0		*		*		8	9	3
33		34		21	11	30	5	34		32	2	29	2	17	20	31	.	15	21	572	111	117

Character "*" indicates vote for progressive policies and reform.
Character "0" indicates vote against progressive policies and reform.
† Made motion to reconsider vote.

Table I—Record of Senators,

	A		B		C		D		E		F		G		H		I		J	
	Vote on Eshleman R. R. Reg. Bill.		Vote on constitutional amendment to make clear power of R. R. Commission.		To permit manufacture at State Prisons of furniture for public use.		Vote on Initiative amendment.		Vote on motion to exempt judiciary from recall.		Vote on Recall amendment.		Vote on amendment to Local Option bill to make township unit.		Vote on Walker-Young Anti-Racetrack Gambling bill.		Vote on Woman Suffrage amendment.		Vote on Wright's amendment to Direct Primary measure.	
Senators	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No
Avey	*		*		*		*			*	*			*	*		*			
Beban	*				*		*			*	*		0							*
Bell	*		*		*		*			*	*			*	*		*			*
Bills	*		*				*			*	*		0		*		*			
Birdsall	*				*		*			*	*		0		*		*			*
Black			*		*		*			*	*			*	*		*			*
Boynton	*		*		*		*		0		*			*	*		*			*
Bryant	*				*		*			*	*		0		*		*			*
Burnett	*		*				*			*	*		0		*		*			
Caminetti	*		*		*		*			*	*		0		*		*			*
Campbell	*		*				*			*	*			*	*		*			*
Cartwright			*		*					*	*			*	*		*			*
Cassidy	*				*		*		0		*		0			0	*		0	
Curtin	*		*						0			0	0		*		*		0	
Cutten	*		*				*		0		*			*	*		*			*
Estudillo	*						*		0		*			*	*		*			
Finn	*						*		0		*		0			0	*			
Gates	*		*		*		*			*	*			*	*		*			*
Hans	*				*		*			*	*		0					0		
Hare	*						*			*	*		0				*			*
Hewitt			*		*		*		0		*			*	*		*			
Holohan	*		*				*			*	*		0		*		*			*
Hurd			*		*		*			*	*		0		*		*		0	
Juilliard	*		*				*			*	*		0		*		*			*
Larkins	*				*		*			*	*			*	*		*			*
Lewis	*		*				*			*	*			*	*					*
Martinelli	*		*		*		*		0			0	0		*			0		*
Regan	*		*		*		*			*	*		0			0	*			*
Roseberry			*				*			*	*			*	*		*			*
Rush	*		*		*		*			*	*		0		*		*			*
Sanford	*		*				*			*	*		0					0		*
Shanahan	*		*		*		*			*	*			*	*		*			*
Stetson	*		*		*		*			*	*		0		*		*			*
Strobridge	*		*		*					*	*			*	*		*			
Thompson	*		*		*		*		0		*			*	*		*			*
Tyrrell	*		*				*			*	*		0		*		*			*
Walker			*		*		*			*	*			*	*		*			*
Welch	*		*		*		*			*	*		0				*			
Wolfe			*						0			0	0			0		0	0	
Wright	*							0	0			0	0					0	0	
Totals	33		30		24		35	1	11	29	36	4	23	17	30	4	33	5	5	26

Character "*" indicates vote for progressive policies and reform.
Character "0" indicates vote against progressive policies and reform.
† Made motion to reconsider vote.

Session 1911, on 18 Test Votes.

J — Vote on Direct Primary measure.		K — Vote on Chandler's resolution condemning whitewashing of Lorimer.		L — Vote on bill to restore the Australian ballot.		M — Vote on Short Ballot bill to make office State Printer appointive.		N — Vote on bill to put State Capitol and grounds under responsible management.		O — Vote on S. C. A. 26—Reversals in criminal cases.		P — Vote on bill to make Bank Commissioner hold office at pleasure of Governor.		Q — Vote on S. C. A. 5—Granting home rule to counties.		R — Vote on A. B. 788—Conservation bill.		TOTALS. For Progressive Policies.	TOTALS. Against Progressive Policies.	TOTALS. Absent.
Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No			
				*			0	*		*		*		*		*		14	2	2
*		*		*		*		*		*		*		*		*		16		2
*		*				*		*				*		*		*		16		2
*			0	*		*			0	*				*		*		13	3	2
*			0						0			*		*		*		10	4	4
*		*		*				*				*		*				13	2	3
*		*		*		*		*		*		*		*		*		17		1
*			0				0	*		*		*		*		*		13	4	1
*		*				*		*		*		*		*		*		17		1
*				*		*		*		*		*				*		13	1	4
*		*				*		*		*		*		*		*		17		1
*		*		*		*		*				*		*		*		13	1	4
*		*		*		*		*		*		*		*		*		16		2
		*†		*			0		0	*		*		*				8	4	6
*		*		*		*		*		*		*		*		*		17		1
									0	*		*						9	3	6
								*		*		*		*				11	2	5
*			0				0			*		*			0			7	5	6
*				*			0	*		*				*		*		10	3	5
		*		*				*		*		*				*		15		3
*			0	*			0	*		*					0			10	4	4
*				*		*						*				*		11		7
*		*		*		*		*				*		*		*		15	1	2
*			0	*		*			0	*		*		*		*		15	3	
		*		*		*			0	*		*		*				13	2	3
							0	*		*		*				*		11	1	6
		*		*		*		*		*		*		*		*		16	1	1
*			0	*		*			0			*						9	3	6
*		*		*		*		*		*		*		*				15		3
							0					*		*		*		8	3	7
*		*		*					0	*		*		*				13	1	4
				*		*		*				*		*		*		11	2	5
*			0	*			0	*		*				*		*		11	3	4
*		*		*		*		*						*		*		14	1	3
*		*		*		*		*		*		*		*		*		16		2
*		*		*		*		*				*		*		*		15		3
*		*		*		*		*				*		*		*		17		1
*		*					0	*		*		*				*		15	1	2
*				*		*				*		*		*				12	3	3
				*		*		*		*		*				*		14	1	3
29		21	8	29		24	10	28	8	28		35		30	2	29		526	64	130

Character "*" indicates vote for progressive policies and reform.
Character "0" indicates vote against progressive policies and reform.
† Made motion to reconsider vote.

(Continued on Next Page.)

Table II Concluded—Records of Assemblymen,

	A		B		C		D		E		F		G		H		I	
	Vote on Eshelman R. R. Reg. Bill.		Vote on constitutional amendment to make clear power of R. R. Commission.		To permit manufacture at State Prisons of furniture for public use.		Vote on Initiative amendment.		Vote on motion to exempt judiciary from recall.		Vote on Recall amendment.		Vote on amendment to Local Option bill to make township unit.		Vote on Walker-Young Anti-Racetrack Gambling bill.		Vote on Woman Suffrage amendment.	
Assemblymen	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No
Judson	*		*		*		*			*	*			*	*		*	
Kehoe			*		*		*			*	*			*	*		*	
Kennedy			*				*			*	*		0			0	*	
Lamb	*				*		*			*	*			*	*		*	
Lynch	*		*		*				0		*		0					0
Lyon of L. A....	*		*		*		*			*	*		0		*		*	
Lyon of S. F....			*				*			*	*		0		*		*	
Maher					*		*		0		*		0		*		*	
Malone			*				*			*	*		0		*		*	
March					*		*			*	*				*			0
McDonald			*				*			*	*		0		*			0
McGowen	*		*		*		*		0		*			*			*	
Mendenhall			*		*		*			*	*			*	*		*	
Mott	*		*		*		*			*	*			*	*		*	
Mullally					*					*	*		0				*	
Nolan					*					*	*		0			0		0
Polsley			*		*		*			*	*			*	*		*	
Preisker			*		*		*			*	*			*			*	
Randall	*		*		*		*			*	*			*	*		*	
Rimlinger					*		*			*	*		0					0
Rodgers of S. F..	*				*					*	*		0					0
Rogers of A......			*				*			*	*		0		*		*	
Rosendale	*		*				*		0		*		0		*		*	
Rutherford	*		*							*	*				*			
Ryan			*		*		*			*	*		0			0	*	
Sbragia			*		*		*			*	*		0			0		
Schmitt							*		0			0	0		*			0
Slater	*		*		*		*				*		0		*		*	
Smith	*		*		*		*			*	*			*	*		*	
Stevenot	*		*		*		*		0		*			*	*		*	
Stuckenbruck ...	*				*		*			*	*		0		*		*	
Sutherland	*		*				*		0		*		0				*	
Telfer			*		*		*			*	*			*	*		*	
Tibbits					*		*			*	*		0		*		*	
Walker	*						*		0			0	0				*	
Walsh					*		*			*	*		0		*		*	
Williams	*		*				*			*	*			*	*		*	
Wilson	*		*		*		*			*	*		0		*		*	
Wyllie	*		*				*			*	*			*	*		*	
Young	*		*		*		*			*	*			*	*		*	
Totals	20		28		28		35		8	31	38	2	23	15	28	4	31	7
Forward	27		29		28		36		12	28	32	8	10	28	30	1	35	5
Grand Totals..	47		57		56		71		20	59	70	10	33	43	58	5	66	12

Character "*" indicates vote for progressive policies and reform.
Character "0" indicates vote against progressive policies and reform.
† Made motion to reconsider vote.

Session 1911, on 18 Test Votes.

J		K		L		M		N		O		P		Q		R		TOTALS.		
Vote on Direct Primary measure.		Vote on Chandler's resolution condemning whitewashing of Lorimer.		Vote on bill to restore the Australian ballot.		Vote on Short Ballot bill to make office State Printer appointive.		Vote on bill to put State Capitol and grounds under responsible management.		Vote on S. C. A. 26—Reversals in criminal cases.		Vote on bill to make Bank Commissioner hold office at pleasure of Governor.		Vote on S. C. A. 5—Granting home rule to counties.		Vote on A. B. 788—Conservation bill.		For Progressive Policies.	Against Progressive Policies.	Absent.
Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No			
*		*				*		*		*		*		*		*		17		1
*		*		*			0	*		*		*		*		*		16	1	1
*				*			0	*		*		*			0	*		11	4	3
*		*		*		*		*		*		*		*		*		17		1
*			0				0	*		*								7	5	6
*		*						*		*		*		*		*		15	1	2
*		*		*			0	*		*		*		*		*		14	2	2
*				*		*		*				*		*				11	2	5
*		*		*				*		*		*		*		*		14	1	3
			0				0					*			0	*		7	4	7
		*		*		*		*		*		*		*		*		13	2	3
		*		*		*								*		*		12	1	5
*		*		*		*		*		*		*		*		*		17		1
*		*		*		*		*		*		*		*		*		18		
							0		0			*				*		6	3	9
				*				*		*		*				*		8	3	7
*		*		*		*		*				*		*		*		16		2
*				*		*		*		*		*		*		*		15		3
*		*				*		*		*		*		*				16		2
				*			0			*						*		7	3	8
				*			0	*		*						*		8	3	7
*			0	*		*						*				*		11	2	5
*			0	*		*		*		*		*		*		*		14	3	1
		*		*		*		*		*		*		*		*		13		5
*			0				0	*		*		*		*				11	4	3
*			0	*			0	*				*		*		*		11	4	3
			0	*					0			*		*				5	6	7
*		*		*		*		*		*		*		*		*		16	1	1
*		*		*		*		*		*		*		*		*		18		
						*		*		*		*		*				13	1	4
		*		*			0	*				*		*				12	2	4
*		*		*		*		*		*						*		12	2	4
*		*				*		*				*		*		*		15		3
		*		*				*		*		*		*		*		13	1	4
			0													*		4	4	10
				*								*			0			8	2	8
*		*				*		‡				*		*		*		14		4
*		*		*		*		*		*		*		*		*		17	1	
		*				*		*		*		*		*		*		15		3
*		*		*		*		*		*		*		*		*		18		
25		23	8	28		22	11	31	2	27		34		29	3	32		505	68	147
29		21	8	29		24	10	28	8	28		35		30	2	29		526	64	130
54		44	16	57		46	21	59	10	55		69		59	5	61		1031	132	277

Character "*" indicates vote for progressive policies and reform.
Character "0" indicates vote against progressive policies and reform.
† Made motion to reconsider vote.
‡ The original journal of March 15th, page 16, shows that Williams voted for this bill. The corrected journal of the same date, page 2074, does not include his name among those who voted for this measure.

Table II Concluded—Records of Assemblymen,

	A: Vote on Eshelman R. R. Reg. Bill.		B: Vote on constitutional amendment to make clear power of R. R. Commission.		C: To permit manufacture at State Prisons of furniture for public use.		D: Vote on Initiative amendment.		E: Vote on motion to exempt judiciary from recall.		F: Vote on Recall amendment.		G: Vote on amendment to Local Option bill to make township unit.		H: Vote on Walker-Young Anti-Racetrack Gambling bill.		I: Vote on Woman Suffrage amendment.	
Assemblymen	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No
Judson	*		*		*		*			*	*			*	*		*	
Kehoe			*		*		*			*	*			*	*		*	
Kennedy			*				*			*	*		0			0	*	
Lamb	*				*		*			*	*			*	*		*	
Lynch	*		*		*				0		*		0					0
Lyon of L. A....	*		*		*		*			*	*		0		*		*	
Lyon of S. F....			*				*			*	*		0		*		*	
Maher					*		*		0		*		0		*		*	
Malone			*				*			*	*		0		*		*	
March					*		*			*	*				*			0
McDonald			*				*			*	*		0		*			0
McGowen	*		*		*		*		0		*			*			*	
Mendenhall			*		*		*			*	*			*	*		*	
Mott	*		*		*		*			*	*			*	*		*	
Mullally					*					*	*		0				*	
Nolan					*					*	*		0			0		0
Polsley			*		*		*			*	*			*	*		*	
Preisker			*		*		*			*	*			*			*	
Randall	*		*		*		*			*	*			*	*		*	
Rimlinger					*		*			*	*		0					0
Rodgers of S. F..	*				*					*	*		0					0
Rogers of A......			*				*			*	*		0		*		*	
Rosendale	*		*				*		0		*		0		*		*	
Rutherford	*		*							*	*				*			
Ryan			*		*		*			*	*		0			0	*	
Sbragia			*		*		*			*	*		0			0		
Schmitt							*		0			0	0		*			0
Slater	*		*		*		*				*		0		*		*	
Smith	*		*		*		*			*	*			*	*		*	
Stevenot	*		*		*		*		0		*			*	*		*	
Stuckenbruck ...	*				*		*			*	*		0		*		*	
Sutherland	*		*				*		0		*		0				*	
Telfer			*		*		*			*	*			*	*		*	
Tibbits					*		*			*	*		0		*		*	
Walker	*						*		0			0	0				*	
Walsh					*		*			*	*		0		*		*	
Williams	*		*				*			*	*			*	*		*	
Wilson	*		*		*		*			*	*		0		*		*	
Wyllie	*		*				*			*	*			*	*		*	
Young	*		*		*		*			*	*			*	*		*	
Totals	20		28		28		35		8	31	38	2	23	15	28	4	31	7
Forward	27		29		28		36		12	28	32	8	10	28	30	1	35	5
Grand Totals..	47		57		56		71		20	59	70	10	33	43	58	5	66	12

Character "*" indicates vote for progressive policies and reform.
Character "0" indicates vote against progressive policies and reform.
† Made motion to reconsider vote.

Session 1911, on 18 Test Votes.

J Vote on Direct Primary measure.		K Vote on Chandler's resolution condemning whitewashing of Lorimer.		L Vote on bill to restore the Australian ballot.		M Vote on Short Ballot bill to make office State Printer appointive.		N Vote on bill to put State Capitol and grounds under responsible management.		O Vote on S. C. A. 26—Reversals in criminal cases.		P Vote on bill to make Bank Commissioner hold office at pleasure of Governor.		Q Vote on S. C. A. 5—Granting home rule to counties.		R Vote on A. B. 788—Conservation bill.		TOTALS. For Progressive Policies.	Against Progressive Policies.	Absent.
Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No			
*		*				*		*		*		*		*		*		17		1
*		*		*			0	*		*		*		*		*		16	1	1
*				*			0	*		*		*			0	*		11	4	3
*		*		*		*		*		*		*		*		*		17		1
*			0				0	*		*								7	5	6
*		*						*		*		*		*		*		15	1	2
*		*		*			0	*		*		*		*		*		14	2	2
*				*		*		*				*		*				11	2	5
*		*		*				*		*		*		*		*		14	1	3
			0				0					*			0	*		7	4	7
		*		*		*		*		*		*		*		*		13	2	3
		*		*		*								*		*		12	1	5
*		*		*		*		*		*		*		*		*		17		1
*		*		*		*		*		*		*		*		*		18		
							0		0			*				*		6	3	9
				*				*		*		*				*		8	3	7
*		*		*		*		*				*		*		*		16		2
*				*		*		*		*		*		*		*		15		3
*		*				*		*		*		*		*				16		2
				*			0			*						*		7	3	8
				*			0	*		*						*		8	3	7
*			0	*		*						*				*		11	2	5
*			0	*		*		*		*		*		*		*		14	3	1
		*		*		*		*		*		*		*		*		13		5
*			0				0	*		*		*		*				11	4	3
*			0	*			0	*				*		*		*		11	4	3
			0	*					0			*		*				5	6	7
*		*		*		*		*		*		*		*		*		16	1	1
*		*		*		*		*		*		*		*		*		18		
						*		*		*		*		*				13	1	4
		*		*			0	*				*		*				12	2	4
*		*		*		*		*		*						*		12	2	4
*		*				*		*				*		*		*		15		3
		*		*				*		*		*		*		*		13	1	4
			0													*		4	4	10
				*								*			0			8	2	8
*		*				*		‡				*		*		*		14		4
*		*		*		*		*		*		*		*		*		17	1	
		*				*		*		*		*		*		*		15		3
*		*		*		*		*		*		*		*		*		18		
25		23	8	28		22	11	31	2	27		34		29	3	32		505	68	147
29		21	8	29		24	10	28	8	28		35		30	2	29		526	64	130
54		44	16	57		46	21	59	10	55		69		59	5	61		1031	132	277

Character "*" indicates vote for progressive policies and reform.
Character "0" indicates vote against progressive policies and reform.
† Made motion to reco[illegible] vote.
‡ The or[illegible] journal [illegible] 15th, page 16, shows that Williams voted for this bill, [illegible] of the same date, page 2074, does not include his [illegible] for this measure.

Table III—Records of Senators,

	A		B		C		D		E		F		G		H		I		J	
	Vote on S. B. 14—Roseberry Employers' Liability Act.		Vote on S. B. 247—Repealing law which made it crime to entice seamen to desert.		Vote on S. B. 163—Requiring payment of employes in money or its equivalent.		Vote on S. B. 774—Requiring payment of wages at least once a month.		Vote on S. B. 159—Forbidding minors to work between 10 p. m. and 5 a. m.		Vote on S. B. 221—Full Crew Bill.		Vote on A. B. 1030—Limits consecutive hours of duty of R. R. employes to 16.		Vote on A. B. 795—Provides for Free Labor Bureaus.		Vote on A. B. 269—Provides for mine inspection.		Vote on A. B. 541—Requires publicity of strikes, etc., when advertising for employes.	
Senators	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No
1 Avey	F				F		F		F		F						F		F	
2 Beban	F				F				F				F						F	
3 Bell	F			A	F		F		F		F		F		F		F			A
4 Bills	F				F				F		F		F				F		F	
5 Birdsall	F		F		F		F		F		F				F				F	
6 Black	F				F		F		F		F		F		F					
7 Boynton	F		F		F						F		F		F				F	
8 Bryant	F		F		F		F		F		F								F	
9 Burnett	F		F		F		F				F								F	
10 Caminetti	F		F		F		F		F						F		F		F	
11 Campbell	F		F		F				F		F						F		F	
12 Cartwright	F		F				F				F				F					
13 Cassidy	F				F						F		F		F		F			
14 Curtin															F		F		F	
15 Cutten	F		F		F		F				F									
16 Estudillo	F				F		F		F		F		F		F					
17 Finn	F								F		F						F		F	
18 Gates	F		F		F		F		F		F				F		F			A
19 Hans			F				F		F						F					
20 Hare	F		F		F		F		F		F		F				F		F	
21 Hewitt	F		F				F		F		F									A
22 Holohan	F		F		F		F		F		F		F		F		F		F	
23 Hurd	F				F		F				F				F		F			
24 Juilliard	F		F		F		F		F		F		F							
25 Larkins	F			A	F				F		F		F				F		F	
26 Lewis	F		F		F		F						F		F					
27 Martinelli	F		F		F						F				F		F		F	
28 Regan	F		F				F				F		F		F		F		F	
29 Roseberry	F			A	F		F		F		F		F					A	F	
30 Rush	F								F				F		F					
31 Sanford			F		F		F		F		F		F		F		F			
32 Shanahan	F		F		F		F		F		F		F				F		F	
33 Stetson			F						F		F		F					A	F	
34 Strobridge	F		F		F				F		F		F		F				F	
35 Thompson	F						F		F		F				F					A
36 Tyrrell	F		F		F		F		F		F						F		F	
37 Walker	F		F				F		F		F		F				F		F	
38 Welch	F		F		F		F		F		F		F		F		F			
39 Wolfe	F		F				F				F		F		F				F	
40 Wright	F			A	F		F		F				F		F		F		F*	
Totals	36		25	4	29		28		29		33		23		23		21	2	24	4

Character "F" indicates vote for policies supported by the Labor Lobby.
Character "A" indicates vote against policies supported by the Labor Lobby.
* Made motion to reconsider vote.

Session 1911, on Labor Issues.

K		L		M		N		O		P		Q		R		S		T		TOTALS		
Vote on S. C. A. 32—Authorizing Legislature to enact a compulsory compensation law.		Vote on A. C. A. 16—Directing that free text books be furnished school children.		Vote on S. B. 965—The Anti-Injunction Bill.		Vote on A. B. 388—To protect Union Label.		Vote on A. B. 240—Raising age at which children may work from 14 to 15.		Vote on A. B. 1328—Providing for reporting of occupational diseases.		Vote on S. B. 918—Compulsory Arbitration Bill.		Vote on Committee Substitute. A. B. 248—Eight-hour Bill.		Vote on nine-hour amendment to Eight-hour Bill.		Vote on A. B. 248—Eight-hour Bill.		For policies supported by Labor Lobby.	Against policies supported by Labor Lobby.	Absent.
Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No			
F		F			A	F		F		F		A			F	A		F		14	3	3
			A	F		F		F					F		F		F	F		12	1	7
F			A		A	F		F		F		A			F	A		F		14	6	
F		F			A	F		F		F		A			F		F	F		15	2	3
F					A	F		F		F			F		F	A			A	14	3	3
F				F		F				F			F		F		F	F		15		5
F		F			A	F		F		F		A			F	A			A	13	4	3
F				F		F		F		F			F		F		F	F		16		4
F				F		F							F		F		F	F		13		7
F		F		F		F				F			F		F		F	F		17		3
F				F				F		F			F		F		F	F		15		5
				F		F				F			F				F	F		11		9
			A	F		F		F					F		F		F	F		13	1	6
					A	F		F							F		F	F		8	1	11
		F			A								F		F		F	F		10	1	9
		F			A	F		F		F		A						F		12	2	6
			A	F									F		F		F	F		10	1	9
F			A		A	F		F		F		A		A		A		F		13	6	1
				F				F					F		F		F	F		10		10
			A	F		F		F					F		F		F	F		16	1	8
F		F			A	F		F		F		A			F	A		F		12	4	4
F			A		A	F		F		F		A			F	A		F		16	4	
F					A			F		F		A		A		A			A	9	5	6
F		F		F						F			F	A		A		F		13	2	5
F					A	F							F		F		F	F		13	2	5
F		F		F									F		F		F	F		13		7
F			A	F				F		F			F		F		F	F		15	1	4
			A	F		F		F					F		F		F	F		15	1	4
F					A	F				F		A			F	A		F		12	5	3
F		F		F		F				F		A			F		F	F		12	1	7
F		F		F				F		F							F	F		15		5
F		F		F		F				F			F		F		F	F		18		2
		F			A	F				F		A			F		F	F		11	3	6
F		F			A	F		F		F		A			F	A			A	14	4	2
					A	F		F				A		A		A			A	7	6	7
F				F		F				F			F		F	A		F		15	1	4
F		F		F		F		F				A			F		F	F		16	1	3
F			A	F		F		F					F		F		F	F		17	1	2
F			A	F				F		F			F		F					13	1	6
		F			A	F		F				A		A		A		F		12	5	3
27		16	11	22	18	30		26		25		16	22	5	32	14	24	34	5	529	79	192

Character "F" indicates vote for policies supported by the Labor Lobby.
Character "A" indicates vote against policies supported by the Labor Lobby.
* Made motion to reconsider vote.

Table IV Concluded—Records of Assemblymen,

	A		B		C		D		E		F		G		H		I	
	Vote on S. B. 14—Roseberry Employers' Liability Act.		Vote on S. B. 247—Repealing law which made it crime to entice seamen to desert.		Vote on S. B. 163—Requiring payment of employes in money or its equivalent.		Vote on S. B. 774—Requiring payment of wages at least once a month.		Vote on S. B. 159—Forbidding minors to work between 10 p. m. and 5 a. m.		Vote on S. B. 221—Full Crew Bill.		Vote on A. B. 1030—Limits consecutive hours of duty of R. R. employes to 16.		Vote on A. B. 795—Provides for Free Labor Bureaus.		Vote on A. B. 269—Provides for mine inspection.	
Assemblymen	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No
41 Judson	F		F				F		F		F		F		F		F	
42 Kehoe	F		F		F		F		F		F		F		F		F	
43 Kennedy	F		F		F				F		F		F		F		F	
44 Lamb	F		F		F		F				F		F		F		F	
45 Lynch			F						F		F		F				F	
46 Lyon of L. A.	F		F				F				F						F	
47 Lyon of S. F.	F		F		F				F		F		F		F		F	
48 Maher			F		F								F		F		F	
49 Malone	F		F								F						F	
50 March	F		F		F								F		F		F	
51 McDonald	F		F		F				F		F				F		F	
52 McGowen	F		F		F		F								F		F	
53 Mendenhall				A	F		F		F		F						F	
54 Mott				A	F		F		F		F		F				F	
55 Mullally	F										F		F				F	
56 Nolan			F						F		F		F		F		F	
57 Polsley	F		F		F		F		F		F		F		F		F	
58 Priesker	F			A			F						F		F		F	
59 Randall	F		F						F		F		F		F		F	
60 Rimlinger	F		F		F				F		F		F				F	
61 Rodgers of S. F.	F		F		F				F				F		F		F	
62 Rogers of A.	F			A	F		F		F		F		F					
63 Rosendale	F			A	F		F		F		F		F		F		F	
64 Rutherford	F		F		F				F				F					
65 Ryan	F		F		F		F		F								F	
66 Sbragia	F		F				F				F							
67 Schmitt	F		F										F				F	
68 Slater	F				F		F				F		F		F		F	
69 Smith	F			A	F		F				F		F				F	
70 Stevenot	F		F								F		F		F		F	
71 Stuckenbruck	F								F		F				F		F	
72 Sutherland	F		F		F		F		F		F		F		F		F	
73 Telfer	F		F		F		F		F		F		F		F		F	
74 Tibbits	F		F		F						F				F		F	
75 Walker	F		F		F		F				F		F				F	
76 Walsh			F		F				F		F						F	
77 Williams			F						F		F		F		F		F	
78 Wilson	F		F				F		F		F		F		F			
79 Wyllie				A							F		F		F		F	
80 Young			F		F				F		F		F				F	
Totals	31		30	7	25		19		24		32		30		24		36	
Totals for'w'd	25		23	14	28		23		28		34		27		23	2	34	
Grand Totals.	56		53	21	53		42		52		66		57		47	2	70	

Character "F" indicates vote for policies supported by the Labor Lobby.
Character "A" indicates vote against policies supported by the Labor Lobby.
* Made motion to reconsider vote.

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J — Vote on A. B. 541—Requires publicity of strikes, etc., when advertising for employes.		K — Vote on S. C. A. 32—Authorizing Legislature to enact Compulsory Compensation Law.		L — Vote on A. C. A. 16—Directing that free text books be furnished school children.		M — Vote to make S. B. 965, Anti-Injunction Bill, a case of urgency.		N — Vote on A. B. 388—To protect Union Label.		O — Vote on A. B. 240—Raising age at which children may work from 14 to 15.		P — Vote on A. B. 1328—Providing for reporting of occupational diseases.		Q — Vote on A. B. 489—To prevent discrimination against union men.		R — To amend Eight-hour Bill in Assembly, Feb. 9, 1911.		S — Vote on A. B. 248—The Eight-hour Bill.		TOTALS: For policies supported by Labor Lobby.	TOTALS: Against policies supported by Labor Lobby.	TOTALS: Absent.
Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No			
F		F				F											F	F		13		6
F		F		F			A	F		F		F		F			F	F		18	1	
	A			F			A	F		F		F			A	A		F		10	5	4
F		F		F			A	F		F		F		F		A		F		16	3	0
F		F					A	F							A	A		F		9	3	7
F		F					A	F		F		F				A		F		14	2	3
		F		F			A	F		F		F			A		F	F		15	2	2
F		F		F		F		F				F		F			F	F		16	1	2
	A	F		F			A	F		F		F			A	A				12	5	2
F				F		F		F						F			F	F		14		5
F			A				A	F		F		F			A	A		F		11	5	3
F			A	F			A	F		F						A		F		10	4	5
F		F		F			A					F			A		F			11	2	6
		F				F								F			F	F		11		8
	A		A	F			A					F								3	4	12
		F		F		F		F		F		F		F		A		F		13	1	5
F							A	F		F		F				A		F		8	3	8
F		F		F		F				F				F			F	F		13		6
F		F				F				F				F			F	F		14		5
	A	F		F			A	F		F		F				A		F		11	4	4
F		F		F		F		F		F							F	F		16		3
F				F				F		F							F	F		9		10
F		F		F			A					F		F		A		F		13	2	4
	A	F					A	F		F						A		F		11	4	4
F		F					A	F								A		F		11	2	6
F				F				F		F				F			F	F		10		9
F		F				F		F		F		F		F			F	F		15		4
F		F		F			A	F		F		F		F		A		F		14	2	3
F		F		F		F		F						F		A		F		15	2	2
F		F		F		F		F						F		A		F		13	1	5
F		F		F			A	F		F		F				A		F		14	3	2
F		F		F			A		A	F		F				A		F		13	3	3
F		F				F		F				F		F			F	F		16		3
		F		F			A	F							A			F		11	2	6
F		F		F			A	F				F		F						13	1	5
F		F		F			A	F		F		F		F			F	F		16	1	2
	A	F		F			A	F		F		F				A		F		10	5	4
F				F			A			F		F		F			F	F		11	2	6
							A	F		F				F		A		F		8	3	8
F		F					A	F		F							F	F		14	1	4
29	6	30	3	27		12	26	31	1	26		23		19	7	20	17	36		495	79	186

Character "F" indicates vote for policies supported by the Labor Lobby.
Character "A" indicates vote against policies supported by the Labor Lobby.
* Made motion to reconsider vote.

(Continued on next page.)

Table V—Records of Assemblymen

Assembly vote on Wyllie Local Option Bill.	A: Vote on motion to fix date of passage February 2.		B: To change unit from County to Township.		C: Vote on Bill.		D: To concur in Senate Township Amendment.		E: To concur in Senate Amendment to permit sale of liquor in hotels, etc.		F: Vote on Free Conference Committee's report.		TOTALS. For the Bill.	TOTALS. Against the Bill.	TOTALS. Absent.
Assemblymen	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No			
Beatty	F		A			A						A	1	3	2
Beckett	F			F	F			F		F	F		6		
Benedict	F			F	F			F		F	F		6		
Bennick				F	F			F			F		4		2
Bishop	F			F	F			F		F			5		1
Bliss	F			F	F			F		F	F		6		
Bohnett	F			F	F			F		F	F		6		
Brown	F			F	F			F		F	F		6		
Butler	F			F	F			F		F	F		6		
Callaghan		A	A			A	A		A			A		6	
Cattell	F			F	F			F		F	F		6		
Chandler				F	F			F		F	F		5		1
Clark	F			F	F			F		F	F		6		
Coghlan		A		F	F		A					A	2	3	1
Cogswell	F			F	F			F		F	F		6		
Cronin	F			F	F			F		F	F		6		
Crosby	F			F	F		A			F	F		5	1	
Cunningham ...		A					A					A		3	3
Denegri			A			A	A		A			A		5	1
Farwell	F			F	F			F		F	F		6		
Feeley			A			A	A					A		4	2
Fitzgerald		A		F		A	A			F		A	2	4	
Flint	F			F	F			F		F	F		6		
Freeman	F			F	F			F		F	F		6		
Gaylord			A		F		A			F	F		3	2	1
Gerdes	F						A		A			A	1	3	2
Griffin		A	A			A	A			F			1	4	1
Griffiths				F	F			F		F	F		5		1
Guill	F			F	F			F		F	F		6		
Hall	F			F	F								3		3
Hamilton	F			F	F			F		F	F		6		
Harlan	F			F		A	A			F	F		4	2	
Hayes			A			A	A		A			A		5	1
Held	F		A		F		A			F	F		4	2	
Hewitt	F			F	F			F		F	F		6		
Hinkle	F			F	F			F		F	F		6		
Hinshaw	F			F	F			F		F	F		6		
Jasper	F			F	F			F		F	F		6		
Jones	F		A		F		A				F		3	2	1
Joel	F		A		F						F		3	1	2
Total vote....	28	5	10	28	30	8	14	23	4	28	28	9	165	50	25

Character "F" shows vote for what the Local Option advocates wanted and against what the Liquor Lobby was working for.

Character "A" shows vote against what the Local Option advocates wanted and for what the Liquor Lobby was working.

A clear record on the measure shows six "F's."

on Local Option Bill.

Assembly vote on Wyllie Local Option Bill.	A: Vote on motion to fix date of passage February 2.		B: To change unit from County to Township.		C: Vote on Bill.		D: To concur in Senate Township Amendment.		E: To concur in Senate Amendment to permit sale of liquor in hotels, etc.		F: Vote on Free Conference Committee's report.		TOTALS. For the Bill.	TOTALS. Against the Bill.	TOTALS. Absent.
Assemblymen	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No			
Judson	F			F	F			F		F	F		6		
Kehoe	F			F	F			F		F	F		6		
Kennedy		A	A			A	A					A		5	1
Lamb	F			F	F			F		F	F		6		
Lynch	F		A		F		A			F	F		4	2	
Lyon of L. A...			A		F			F			F		3	1	2
Lyon of S. F...		A	A			A	A		A			A		6	
Maher	F		A		F		A			F	F		4	2	
Malone	F		A		F							A	2	2	2
March	F						A			F			2	1	3
McDonald		A	A			A	A		A			A		6	
McGowen				F	F		A		A		F		3	2	1
Mendenhall	F			F	F			F		F	F		6		
Mott	F			F	F			F		F	F		6		
Mullally		A	A			A	A					A		5	1
Nolan		A	A			A	A		A			A		6	
Polsley	F			F	F			F		F	F		6		
Preisker	F			F	F			F		F	F		6		
Randall	F			F	F			F		F	F		6		
Rimlinger			A			A	A		A			A		5	1
Rodgers of S. F.		A	A			A	A		A			A		6	
Rogers of A....	F		A		F			F		F	F		5	1	
Rosendale	F		A		F		A			F	F		4	2	
Rutherford							A					A		2	4
Ryan		A	A			A	A		A			A		6	
Sbragia		A	A			A	A		A			A		6	
Schmitt		A	A			A	A		A			A		6	
Slater			A		F		A		A		F		2	3	1
Smith	F			F	F			F		F	F		6		
Stevenot	F			F	F			F		F	F		6		
Stuckenbruck...			A		F		A						1	2	3
Sutherland			A		F		A			F	F		3	2	1
Telfer	F			F	F			F		F	F		6		
Tibbits		A	A			A	A							4	2
Walker			A		F								1	1	4
Walsh			A			A	A		A					4	2
Williams	F			F	F			F	A		F		5	1	
Wilson		A	A		F		A			F	F		3	3	
Wyllie	F			F	F			F		F	F		6		
Young	F			F	F			F		F	F		6		
Total vote....	20	11	23	15	26	12	22	16	12	20	23	12	120	92	28
Forward......	28	5	10	28	30	8	14	23	4	28	28	9	165	50	25
Grand Total..	48	16	33	43	56	20	36	39	16	48	51	21	285	142	53

Character "F" shows vote for what the Local Option advocates wanted and against what the Liquor Lobby was working for.

Character "A" shows vote against what the Local Option advocates wanted and for what the Liquor Lobby was working.

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Table VI—Records of Senators on Local Option Bill.

Senate Vote on Wyllie Local Option Bill.	A Vote on Amendment to make Township the unit instead of County.		B Vote on Amendment to permit sale of liquors in hotels, etc.		C Vote on Bill as amended in Senate.		D Vote to recede from Amendment to permit sale of liquors in hotels, etc.		E Vote to recede from Amendment making Township the unit.		F Vote on Free Conference Committee's report.		TOTALS.		
Senator	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	For the Bill.	Against the Bill.	Absent.
Avey		F		F			F		F		F		5		1
Beban	A		A		F			A		A		A	1	5	
Bell		F		F	F		F		F		F		6		
Bills	A		A					A		A		A		5	1
Birdsall	A		A		F		F			A	F		3	3	
Black		F		F	F		F		F		F		6		
Boynton		F		F	F		F		F		F		6		
Bryant	A		A		F			A		A		A	1	5	
Burnett	A		A					A		A		A		5	1
Caminetti	A		A			A		A		A		A		6	
Campbell		F		F	F		F		F		F		6		
Cartwright		F	A					A	F		F		3	2	1
Cassidy	A		A		F			A		A		A	1	5	
Curtin	A		A		F			A		A	F		2	4	
Cutten		F		F	F		F		F		F		6		
Estudillo		F		F	F		F		F		F		6		
Finn	A		A					A		A		A		5	1
Gates		F		F	F		F		F		F		6		
Hans	A		A					A		A		A		5	1
Hare	A		A			A		A		A		A		6	
Hewitt		F		F	F		F		F		F		6		
Holohan	A		A		F			A		A	F		2	4	
Hurd	A		A		F			A		A	F		2	4	
Juilliard	A		A		F			A		A	F		2	4	
Larkins		F		F	F		F		F		F		6		
Lewis		F		F	F		F		F		F		6		
Martinelli	A		A					A		A	F		1	4	1
Regan	A		A			A		A		A		A		6	
Roseberry		F		F	F		F		F		F		6		
Rush	A		A		F		F			A	F		3	3	
Sanford	A		A		F			A		A	F		2	4	
Shanahan		F		F	F		F		F		F		6		
Stetson	A			F	F		F			A	F		4	2	
Strobridge		F		F	F		F		F		F		6		
Thompson		F		F	F		F		F		F		6		
Tyrrell	A		A		F			A		A	F		2	4	
Walker		F		F	F		F		F		F		6		
Welch	A		A		F			A		A		A	1	5	
Wolfe	A		A		F							A	1	3	2
Wright	A		A		F			A	F		F		3	3	
Total vote....	23	17	23	17	30	3	19	20	18	21	28	12	129	102	9

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on Local Option Bill.

	A		B		C		D		E		F		TOTALS.		
Assembly vote on Wyllie Local Option Bill.	Vote on motion to fix date of passage February 2.		To change unit from County to Township.		Vote on Bill.		To concur in Senate Township Amendment.		To concur in Senate Amendment to permit sale of liquor in hotels, etc.		Vote on Free Conference Committee's report.		For the Bill.	Against the Bill.	Absent.
Assemblymen	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No	Aye	No			
Judson	F			F	F			F		F	F		6		
Kehoe	F			F	F			F		F	F		6		
Kennedy		A	A			A	A					A		5	1
Lamb	F			F	F			F		F	F		6		
Lynch	F		A		F		A			F	F		4	2	
Lyon of L. A...			A		F			F			F		3	1	2
Lyon of S. F...		A	A			A	A		A			A		6	
Maher	F		A		F		A			F	F		4	2	
Malone	F		A		F							A	2	2	2
March	F						A			F			2	1	3
McDonald		A	A			A	A		A			A		6	
McGowen				F	F		A		A		F		3	2	1
Mendenhall	F			F	F			F		F	F		6		
Mott	F			F	F			F		F	F		6		
Mullally		A	A			A	A					A		5	1
Nolan		A	A			A	A		A			A		6	
Polsley	F			F	F			F		F	F		6		
Preisker	F			F	F			F		F	F		6		
Randall	F			F	F			F		F	F		6		
Rimlinger			A			A	A		A			A		5	1
Rodgers of S. F.		A	A			A	A		A			A		6	
Rogers of A....	F		A		F			F		F	F		5	1	
Rosendale	F		A		F		A			F	F		4	2	
Rutherford							A					A		2	4
Ryan		A	A			A	A		A			A		6	
Sbragia		A	A			A	A		A			A		6	
Schmitt		A	A			A	A		A			A		6	
Slater			A		F		A		A		F		2	3	1
Smith	F			F	F			F		F	F		6		
Stevenot	F			F	F			F		F	F		6		
Stuckenbruck...			A		F		A						1	2	3
Sutherland			A		F		A			F	F		3	2	1
Telfer	F			F	F			F		F	F		6		
Tibbits		A	A			A	A							4	2
Walker			A		F								1	1	4
Walsh			A			A	A		A					4	2
Williams	F			F	F			F	A		F		5	1	
Wilson		A	A		F		A			F	F		3	3	
Wyllie	F			F	F			F		F	F		6		
Young	F			F	F			F		F	F		6		
Total vote....	20	11	23	15	26	12	22	16	12	20	23	12	120	92	28
Forward......	28	5	10	28	30	8	14	23	4	28	28	9	165	50	25
Grand Total..	48	16	33	43	56	20	36	39	16	48	51	21	285	142	53

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what compromises were made, and who made them, and it points out the mistakes made by reformers.

Mr. Hichborn emphasizes the fact that although the reform element had a majority in both Senate and Assembly, good bills were defeated and vicious measures enacted. He attributes this result to three causes: the facts that the reform element was without a plan of action, that it was without organization, and that the machine was permitted to organize both sides.

He tells the story of the fights on the anti-Racetrack Gambling bill, on railroad legislation, on the Commonwealth Club bills for the reform of abuses in the law, on the Local Option bill, on the Change of Venue bill, on the anti-Japanese bills and on the Direct Primary bill. His statements are amply verified by reference and quotations in the footnotes and appendices.

There is an interesting chapter on the San Francisco delegation, which cast nearly twenty-five per cent of the vote in each house, and which, with few exceptions, stood solidly with the machine and against every reform bill.

Mr. Hichborn does not neglect to recount the activity of the lobbyists and the manner in which the "faithful" were rewarded by the machine. The book is a complete birdseye view of the session and an interesting exposition of the practical workings of the Legislature. It should be read by every student of American government, from Mr. Bryce downward. Let us hope that Mr. Hichborn will report future sessions, also, as he has reported the session of 1909.

THE 1909 CALIFORNIA LEGISLATURE.

(Collier's Weekly, Dec. 25, 1909.)

In the California Legislature last year a majority stood for good government. Considerable bad legislation, nevertheless, was passed and few bills of a so-called reform nature became law without being remodeled to suit the machine. Why was this so with a well meaning majority? The opponents of the machine, new to their duties, were mostly unskilled in the details of legislation. Least of all did they seem to understand the importance of the preliminary organization of the two Houses. The machine members had their work mapped out before the Legislature met. The reformers, on the contrary, allowed the machine forces to elect a Speaker through the timidity of some of the House members, who feared possible failure and subsequent punishment in the loss of local appropriation bills. The machine Speaker appointed committees according to prearranged program, and needed legislation was chloroformed in committee. In the attempt to pass the Race-Track Law it was discovered that the clerk of the

Senate Enrolling and Engrossing Committee had been a recent employee of a notorious California pool-room. The bill for non-partisan judicial nominations was held up in committee until the day before adjournment and defeated in the rush of the closing hours. Other bills were improperly entered by title on the journal in the hope of thus having them declared unconstitutional. These reflections, and much more of interest to every one interested in politics, may be found embodied in a little volume called "The Story of the California Legislature of 1909." Its author is Franklin Hichborn of Santa Clara, California.

If every legislator elected in each State next year would peruse this volume, the machines might sooner be dismantled. Even the pettiest politics is a science. Emerson thinks that success in government and in a peanut-stand have much in common. Even the peanut business must be learned.

HIS RECORD UNDID HIM.

(California Weekly.)

The case of Harry Pulcifer should be a warning to two kinds of people, to those who make records and to those who should make records known. It was Hichborn's "Story of the California Legislature," that defeated Pulcifer. There was no getting away from that record. And this was no injustice to Pulcifer. No man has any right to quarrel with his own record. Nothing spoke against Pulcifer but his record. It was the only objection to him. What Hichborn's history did in that district it has done in many others. That history has proven a mighty profitable proposition to the State of California. Some plan should be devised for a like history of each legislative session. Who will see to it?

ONE REASON WHY NEXT LEGISLATURE WILL BE GOOD.

(Fresno Republican.)

One of the most important reasons why the next Legislature (1911) is going to be decent is the unobtrusive and unrewarded service of a quiet newspaper man, Franklin Hichborn, who kept track of what the last Legislature did and wrote it down in a book.

Men with only a vague knowledge of legislative affairs read the clear records of that book and were inspired with ambition to do the things that are right and worth while in the law-making

body of the State. Legislators whose records could not stand the test of publicity had to face those records when they went home.

If at any point, the Hichborn record against any man was biased by the mistake or personal prejudice of the author, the legislator concerned had no difficulty meeting and explaining the record, so any errors of fallible human judgment which the book may have contained did no harm. But the stern facts, marshaled in their relations, did fatal harm to those condemned by them. The whole defeated Los Angeles gang attributed their defeats to Hichborn. The defeat of unfit men elsewhere, and the making clearly right of muddled men as well as the renomination and assured re-election of positively right men, are all in large part due to the labor of this one writer, who simply took pains to collect the facts and present them in order.

It was a public service of immeasurable value.

HICHBORN'S WORK.

(Chicago Public.)

To have read Franklin Hichborn's Story of the California Legislature of 1909, and then to have considered the course that California politics has taken since, is to be in a state of mind to think of the two as having in some degree at least the relation of cause and effect. That story is a masterly exposure, by a competent observer and writer, of government by misrepresentatives. And now California is far on the way toward putting the People's Power check upon her representatives, whoever they are and whatever their functions. Mr. Hichborn's purpose, therefore, of publishing a companion book on the California Legislature of 1911, will doubtless receive ample encouragement. Local interest alone should insure a large circulation of these books in California, but the methods of misrepresentative government are so much alike everywhere that Mr. Hichborn's true stories will be educative in any other State of the Union as well as in California.

HICHBORN'S SERVICE TO THE STATE.

(San Francisco Star.)

Lynn Haines, author of "The Minnesota Legislature of 1909," has written a review of the session of the Minnesota Legislature just closed, calling his book "The Minnesota Legislature of 1911."

As in his first work, in his "Minnesota Legislature of 1911," Mr. Haines has followed the general plan of Franklin Hichborn's "Story of the California Legislature of 1909."

Mr. Haines has sent a copy of his new book to Mr. Hichborn.

In this volume, the author has written: "To Franklin Hichborn, The Pioneer, Lynn Haines."

In the preface of his "Story of the California Legislature of 1909," Hichborn stated that the labor of preparing the volume for the press would be justified if it gave The People information of the "weakness, the strength, and purposes, and the affiliations of the Senators and Assemblymen who sat in the Legislature of 1909;" and pointed "the way for a new method of publicity to crush corruption and to promote reform—a way which others better prepared for the work than I, may, in California, and even in other States, follow."

Hichborn's book did furnish The People of California with theretofore unobtainable information of their Senators and Assemblymen, and, acting largely upon that information, The People of California returned to the Legislature those members who were worthy, and refused re-election to those who were unworthy.

And the book pointed the way for a new method of publicity to crush corruption and promote reform, of which other States have been quick to take advantage.

With Hichborn's book before him, Mr. Haines has done a large service for Minnesota by publishing similar reviews of the Minnesota Legislature of 1909 and of 1911. A similar review has appeared of the last Oregon legislative session.

Following Hichborn's plan, a citizen of New Hampshire has prepared a review of the work of the Legislature of that State. Colorado and Wisconsin are reported to have similar works in preparation.

Hichborn must feel that the tests which he fixed for justification of his 1909 review have been met.

We have been told that the California Legislature of 1911 was the "best ever"!

We concur!

Absolutely true!

And we believe that we are indebted for that indisputable fact to Hichborn's book, the "Story of the California Legislature of 1909."

"THE BEAST THAT KILLS."

(W. G. Eggleston, in Chicago Public.)

Two men have recently set themselves to describing the "Beast that Kills" so that its tracks and marks may be recognized, and The People may know "how it works" and why it exists. The first writer is Franklin Hichborn of Santa Clara, California, who has just published a book, "Story of the California Legislature of 1909." The second writer is Judge Ben B. Lindsey, of Denver,